AGENDA
Special Meeting of the Governing Body of the Alameda Reuse and Redevelopment Authority
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Alameda City Hall
Council Chamber, Room 390
2263 Santa Clara Avenue
Alameda, CA 94501

Wednesday, July 18, 2007
Meeting will begin at 7:00 p.m.

1. ROLL CALL

2. CONSENT CALENDAR

Consent Calendar items are considered routine and will be enacted, approved or adopted by one motion unless a request for removal for discussion or explanation is received from the Board or a member of the public.

2-A. Approve the minutes of the Regular Meeting of June 6, 2007.

2-B. Review and Approve Subleases for Antiques by the Bay at Alameda Point.

3. REGULAR AGENDA ITEMS

3-A. Alameda Point Environmental Remediation Update: Installation Restoration Site 1.

3-B. Authorize PM Realty Group to Enter into a Contract with Clyde G Steagall, Inc. for Construction Management Services for Pier 2 Electrical Upgrades at Alameda Point with a Total Project Cost Not to exceed $1,719,000.

3-C. Approve a Contract with Universal Protection Service in an Amount Not to Exceed $200,000 for Private Security Service at Alameda Point.

4. ORAL REPORTS

4-A. Oral report from Member Matarrese, Restoration Advisory Board (RAB) representative.

5. ORAL COMMUNICATIONS, NON-AGENDA (PUBLIC COMMENT)
(Any person may address the governing body in regard to any matter over which the governing body has jurisdiction that is not on the agenda.)

6. COMMUNICATIONS FROM THE GOVERNING BODY

7. ADJOURNMENT

This meeting will be cablecast live on channel 15.

CITY OF ALAMEDA • CALIFORNIA

SPECIAL JOINT MEETING OF THE CITY COUNCIL,
ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY (ARRA), AND
COMMUNITY IMPROVEMENT COMMISSION (CIC)
WEDNESDAY - - - JULY 18, 2007 - - - 7:01 P.M.

Location: **City Council Chambers**, City Hall, corner of Santa Clara Avenue and Oak Street.

Public Participation
Anyone wishing to address the Council/Board/Commission on agenda items or business introduced by the Council/Board/Commission may speak for a maximum of 3 minutes per agenda item when the subject is before the Council/Board/Commission. Please file a speaker's slip with the Deputy City Clerk if you wish to speak.

PLEDGE OF ALLEGIANCE

1. ROLL CALL - City Council, ARRA, CIC

2. AGENDA ITEM

2-A. Recommendation to approve Exclusive Negotiation Agreement (ENA) between the City Council, ARRA, CIC and SunCal Companies for the Redevelopment of Alameda Point. (Development Services)

3. ADJOURNMENT - City Council, ARRA, CIC

Beverly Johnson, Mayor
Chair, Alameda Reuse and
Redevelopment Authority and
Community Improvement Commission

Notes:

- Sign language interpreters will be available on request. Please contact the ARRA Secretary at 749-5800 at least 72 hours before the meeting to request an interpreter.
- Accessible seating for persons with disabilities (including those using wheelchairs) is available.
- Minutes of the meeting are available in enlarged print.
- Audio tapes of the meeting are available for review at the ARRA offices upon request.

UNAPPROVED
MINUTES OF THE REGULAR MEETING OF THE
ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY

Wednesday, June 6, 2007

2-A

The meeting convened at 7:26 p.m. with Chair Johnson presiding.

1. ROLL CALL

Present: Beverly Johnson, Chair of Alameda
Marie Gilmore, Boardmember, City of Alameda
Doug deHaan, Boardmember, City of Alameda
Frank Matarrese, Boardmember, City of Alameda
Lena Tam, Boardmember, City of Alameda

2. CONSENT CALENDAR

2-A. Approve the minutes of the Special Meeting of May 8, 2007.

Approval of the consent calendar was motioned by Member Matarrese, seconded by Member Gilmore and passed by the following voice vote: Ayes – 5; Noes – 0; Abstentions – 0.

3. REGULAR AGENDA ITEMS

3-A. Oral Report Update – Alameda Point Master Developer

Debbie Potter, Base Reuse and Community Development Manager, summarized the status of the Master Developer negotiations. Staff and SunCal kicked off the due diligence process on May 13, 2007, and negotiation of the Exclusive Negotiating Agreement (ENA), which will govern the entitlement process over the next 24 months, is actively underway. The sixty day due diligence period ends on July 12th and if SunCal elects to go forward with the project, the ENA will be presented to the ARRA Board for its consideration at a Special meeting on July 18.

Michael Perata, Vice President of Acquisitions for SunCal, arrived late (after Item 3-B closed), and Chair Johnson re-opened Item 3-A in order for him to give SunCal's update on the due diligence process.

3-B. ARRA Budget Update

Leslie Little, Development Services Director, gave a powerpoint presentation on the annual ARRA Budget update. The presentation discussed highlights of the year just completed, and projections for moving forward. Major highlights include the stabilization of ARRA lease revenue, payment of full AP Bond, and payment of Citywide Development fee.

4. ORAL REPORTS

4-A. Oral report from Member Matarrese, Restoration Advisory Board (RAB) representative.

There was no report, as the next RAB meeting is tomorrow night (6/7). Member Matarrese will provide a report at the next ARRA meeting.

5. ORAL COMMUNICATIONS, NON-AGENDA (PUBLIC COMMENT)

There was one speaker, Kevin Kearny, City Auditor, who spoke about lease and procedural issues at Alameda Point, specifically the results of an interim audit which showed significant write-offs of tenant rents at Alameda Point. Mr. Kearny wanted to understand the process by which the ARRA makes decisions regarding tenants that are in arrears with their rent, or that have other contractual problems. Leslie Little explained that there is a procedure in place given to staff by the ARRA, that any lease negotiation be brought to ARRA for policy direction. Mr. Kearny was interested in seeing the documentation that supports the decision of the current lease (for the specific tenant being referred to).

Member Matarrese requested that this issue be agendized so that it can be discussed formally.

6. COMMUNICATIONS FROM THE GOVERNING BODY

Member deHaan discussed the economic viability of building residential at Alameda Point. Member Gilmore clarified what Member deHaan meant by "affordability" of homes and discussed that the economic driver of the project was not just the homes, but the type and mix of homes that make it market driven for the developer.

7. ADJOURNMENT

Meeting was adjourned at 8:24 by Chair Johnson.

Respectfully submitted,

Irma Glidden
ARRA Secretary

Alameda Reuse and Redevelopment Authority
Interoffice Memorandum

2-B

July 18, 2007

TO: Honorable Chair and Members of the Alameda Reuse and Redevelopment Authority

FROM: Debra Kurita, Executive Director

SUBJ: Review and Approve Subleases for Antiques by the Bay at Alameda Point

BACKGROUND

In accordance with a policy established in 2004, the ARRA governing body reviews and approves all new and existing Alameda Point subleases with a lease term greater than one year.

DISCUSSION

Attachment A describes the business terms for the two proposed subleases, both of which are for Antiques by the Bay.

The first lease is a renewal lease for Antiques by the Bay, but a new lease for the company's use of the Northwest Territory. This area will be used to conduct the monthly Antique Faire while the Navy uses Taxiway "H", the current site of the antiques fair, during the remediation of the Seaplane Lagoon. The rent for ANTIQUES BY THE BAY is 25% of the gross receipts from seller booth rentals, buyer admissions and parking charges. The minimum fee shall be $60,000. The area they will be using is approximately 70 acres.

The second lease is for Building 420. The rent for ANTIQUES BY THE BAY is $14,952 annually, or $0.18 per sq. ft. in the first year, escalating 3% in subsequent years. Antiques by the Bay intends to use the 6,920 sq. ft. Building 420 for storage of equipment, such as fencing and tables, to support the monthly Antique Faire. This facility is in poor condition and does not have electric or water service.

BDUGET CONSIDERATION / FINANCIAL IMPACT

The leases are expected to raise more than $74,952.00 in the first year. These funds will be retained by the ARRA.

RECOMMENDATION

Approve the proposed sublease agreements.

Respectfully submitted,

Leslie Little
Development Services Director

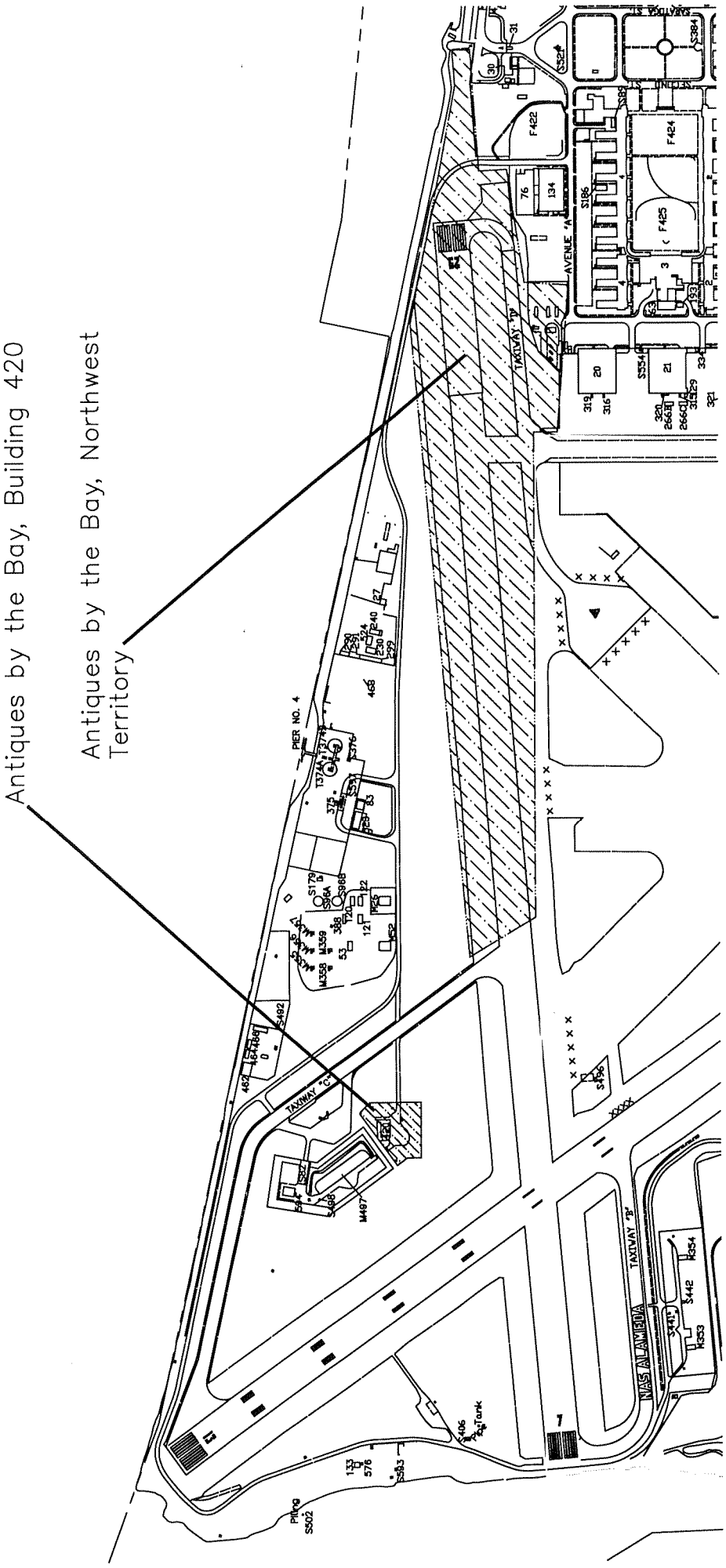
By: Nanette Banks
Finance & Administration Manager

Attachment: A. Proposed Sublease Business Terms
B. Site Map

ATTACHMENT A
PROPOSED SUBLEASE BUSINESS TERMS

TENANT	BUILDING	SIZE (SF)	TERM	RENT
Antiques by the Bay	Northwest Territory	70 acres	5 yrs	25% of Gross Receipts ($5,000 minimum)
Antiques by the Bay	420	6,920	5 yrs	$1,246/mo.

ATTACHMENT B



Alameda Reuse and Redevelopment Authority
Interoffice Memorandum

3-A

July 18, 2007

TO: Honorable Chair and Members of the Alameda Reuse and Redevelopment Authority

FROM: Debra Kurita, Executive Director

RE: Alameda Point Environmental Remediation Update: Installation Restoration Site 1

Background

The Alameda Reuse and Redevelopment Authority (ARRA) has participated in the on-going environmental decision-making process for IR (Installation Restoration) Site 1, the closed landfill at the northwest corner of Alameda Point, particularly with regard to the former waste disposal area. On November 9, 2006, the ARRA commented on the Navy's September 2006 Proposed Plan for IR Site 1. ARRA's comment letter urged removal of all wastes with offsite disposal, citing two problems: (1) probable large amounts of hazardous industrial wastes, including intact drums that have yet to leak and release their contents, and (2) proximity to San Francisco Bay.

On April 11, 2007, the Navy issued its draft Record of Decision (ROD) for IR Site 1 for review and comment by the Base Closure and Realignment Commission (BRAC) Closure Team (BCT), which is comprised of the Environmental Protection Agency (EPA), the California Department of Toxic Substances Control (DTSC), and the State Regional Water Quality Control Board. As with its Proposed Plan, the Navy's draft ROD prescribes leaving most of the waste in place under a four-foot thick soil cover. The draft ROD includes responses to comments the Navy received on its Proposed Plan. In response to ARRA's November 9 comment, the Navy defends its cover-in-place decision by relying on EPA's presumptive remedy guidance. Based on its extensive experience with municipal landfills, EPA's 1993 guidance creates the presumption that in-place containment is the most appropriate clean-up remedy for municipal landfills. Subsequent EPA guidance provides that its presumptive remedy for municipal landfills, in-place containment, is also applicable to appropriate military landfills.

At its May 8, 2007, Special Meeting, the ARRA Board approved, with minor modifications, a draft letter commenting on the Navy's draft Record of Decision for IR Site 1. Based on the developments discussed in this staff report, that letter was not sent to the Navy. Instead, on June 25, 2007, ARRA sent the attached letter to EPA expressing concern with the remedy selection process for the former landfill.

Discussion

Synopsis of ARRA's June 25, 2007, letter to EPA

The purpose of ARRA's June 25 letter was to appeal to EPA in its oversight role of the Navy's CERCLA cleanup at Alameda Point, expressing ARRA's concern about the course being taken with remedy selection for the landfill. ARRA's letter makes four points:

1. *EPA's presumptive remedy process for municipal landfills should not be used to select containment for the IR Site 1 landfill.* EPA's guidance allows application of the presumptive remedy process only to "appropriate" military landfills—only to military landfills that are similar to municipal landfills. ARRA's letter points out that IR Site 1 received wastes for thirteen years from the base's extensive industrial operations: aircraft, engine, gun, and avionics maintenance; engine overhaul and repair; plating, stripping, and painting activities; etc. The probable high fraction of hazardous industrial waste in the landfill makes it unlike most municipal landfills and an inappropriate landfill for applying EPA's presumptive remedy process. In addition, EPA's presumptive remedy for municipal landfills is not suitable for military landfills in areas with high water tables, wetlands, or other sensitive environments. IR Site 1 has all of these conditions.

2. *Whether large amounts of hazardous industrial wastes and intact drums are buried in the landfill should be investigated before remedy selection.* None of the Navy's investigations of IR Site 1 has included sampling or other direct observation of the buried waste. This should be done to evaluate whether the landfill contains drums of hazard industrial wastes that are still intact. Intact drums will eventually leak their contents into the environment. The Navy has orally represented that most drums were crushed upon burial and that those that did not rupture initially have failed since and their contents dissipated. This assumption deserves to be validated by either trenching into the landfill cells or employing some other intrusive method of investigation because it is critical to remedy selection.

3. *The Feasibility Study (FS) overestimates the volume of wastes in the landfill cells, resulting in an inflated estimated cost to remove the landfill.* The historical information in IR Site 1's Remedial Investigation report suggests that far less waste was disposed in the landfill than the Navy's cost calculations assume would have to be excavated and hauled away with the complete removal alternative. An inflated removal cost could adversely influence the remedial decisionmaking, which considers cost when selecting the final remedy.

4. *The FS fails to consider the alternative of excavating wastes from IR Site 1 and consolidating them in a properly designed onsite landfill, for example at IR Site 2.* A member of the Alameda Point Restoration Advisory Board recommended that the FS evaluate relocating the IR Site 1 wastes to a properly designed landfill, presumably in the runway area near the IR Site 2 landfill. This proposal would eliminate the poorly contained IR Site 1 landfill, but at a much lower cost than removal with offsite disposal, the alternative the FS evaluates. The Navy's FS does not adopt this recommendation.

Response to ARRA's June 25, 2007, letter to EPA

ARRA's letter prompted considerable discussion within the BCT, particularly between EPA and the Navy. In light of ARRA's letter and at the request of EPA and DTSC, the Navy has orally agreed to conduct trenching into the landfill cells in an effort to better estimate the waste volume and to confirm the assumption that intact drums of hazardous industrial waste are not present. Further, EPA has sent the attached letter to the Navy initiating a postponement of the due date for comments on the draft ROD for IR Site 1 until after the Navy has completed this investigation.

The Navy is working with the EPA, DTSC, and Water Board to prepare a work plan as expeditiously as possible, so that the trenching can be completed with a minimum of delay in finalizing the ROD for IR Site 1. ARRA will have an opportunity to review the draft work plan. The Navy hopes to complete the trenching within the next two months. The Navy and other BCT members are hopeful that the trenching will confirm the appropriateness of the alternative selected in the current draft of the ROD. However, all parties recognize that once the investigation is completed, the findings will inform the final clean up remedy. Regardless of what is learned by trenching the landfill, both EPA and DTSC want the Navy to select the remedy for the IR Site 1 landfill without using EPA's presumptive remedy process.

All parties have emphasized the importance of addressing ARRA's concerns. Each agency appreciates the value of demonstrating to the City of Alameda that the remedial decision ultimately reached for the landfill has a sound technical basis. Depending on the outcome of the Navy's trenching activities, ARRA's comment letter on the draft ROD for IR Site 1, which the Board approved on May 8, may need revision. If revisions are required, action on the letter will be brought to the ARRA Board.

Recommendation

This report is for information only and no action is required.

Respectfully submitted,

David Brandt
Assistant City Manager

By: Debbie Potter
Base Reuse & Community Development Manager

DB:DP:sb

Attachments: ARRA letter to EPA re: IR Site 1 Remedy Selection, dated June 25, 2007
EPA letter to Navy re: IR Site 1, dated July 10, 2007

Alameda Reuse and Redevelopment Authority

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Governing Body

Beverly Johnson
Chair

Marie Gilmore
Boardmember

Frank Matarrese
Boardmember

Doug deHaan
Boardmember

Lena Tam
Vice-Chair

Debra Kurita
Executive Director

David Brandt
Deputy Executive Director

June 25, 2007

Anna-Marie Cook
U.S. Environmental Protection Agency
Region IX, Mail Code (SFD-8-2)
75 Hawthorne Street
San Francisco, CA 94105-3901

Re: Deficiencies with CERCLA Remedy Selection for Area 1 of IR Site 1, the 1943-1956 Disposal Area, Alameda Point, Alameda, California

Dear Ms. Cook: Anna-Marie

The purpose of this letter is to express ARRA's deep concern with the course that remedy selection has taken for Area 1a of Alameda Point IR Site 1, the 1943-1956 Disposal Area, and with the remedy that apparently is about to be selected. Because of its narrow scope and abbreviated evaluation of the data, the Remedial Investigation (RI) for IR Site 1 is not a useful or sufficient evidentiary foundation upon which to formulate and compare remedial alternatives. The Feasibility Study (FS) for IR Site 1, although better drafted than the RI, suffers from omission of important alternatives and errors in cost estimation, both fatal flaws. The Proposed Plan and *draft ROD* are inadequate because they are based on the inadequate RI and FS.

IR Site 1 will be part of the Public Trust lands in perpetuity. Accordingly, the City, as trustee of the property, is tremendously interested in assuring that selection and implementation of environmental remediation at this extremely important site fully protects public health and the environment in a cost effective manner. While many aspects of the *draft ROD* for IR Site 1 appear to be consistent with this protectiveness goal, ARRA is concerned with the direction this work has taken at Area 1a, the seven historic landfill cells.

Introduction

IR Site 1, the 1943-1956 Disposal Area, is in the northwest corner of Alameda Point. Within IR Site 1, there are several distinct areas to be remediated. One of these, Area 1a, is a grouping of landfill "cells". The 1943-1956 Disposal Area was the main site for waste disposal, and received all waste generated at NAS Alameda except wastewater while it was in use.

On April 11, 2007, the Navy issued its *Draft Record of Decision for Installation Restoration Site 1, 1943-1956 Disposal Area, Alameda Point, Alameda, California* (*draft ROD*). If the ROD is signed as proposed, the cleanup for Area 1a would consist of installing a 4-foot thick soil cover over the wastes and applying institutional controls.

Issues

Four deficiencies in the *draft ROD*'s underlying decision documents should be corrected before the *draft ROD* is finalized.

1. EPA's presumptive remedy process for municipal landfills should not have been used to select containment for this military landfill.
2. Uncertainty regarding whether or not large amounts of hazardous industrial wastes and intact drums are buried in Area 1a is a data gap that should be investigated before final remedy selection.
3. The FS overestimates the volume of buried wastes in Area 1a, resulting in an estimated cost to excavate all wastes in Area 1 for removal and disposal off-site that is about 300 percent too high.
4. The FS fails to consider the alternative of excavating wastes in Area 1a and consolidating them in a properly designed onsite landfill, for example at IR-2.

Inappropriate Use of EPA's Presumptive Remedy Process for Municipal Landfills

Using EPA's presumptive remedy for municipal landfills guidance is not a suitable method for making remedial decisions for Area 1a. Nevertheless, the *draft ROD* selects containment based on EPA's presumptive remedy process.

In 1993, EPA established guidance and policy directing containment as the presumptive remedy for municipal landfill sites regulated under CERCLA.[1] In 1996, EPA established guidance and policy directing that the municipal landfill presumptive remedy also applies to all appropriate military landfills.[2]

The *draft ROD* inappropriately uses EPA's presumptive remedy process for at least two important reasons.

1. The landfill in Area 1a is unlike municipal landfills.
2. The landfill in Area 1a is located in an area with a high water table, wetlands, and a sensitive environment.

The IR Site 1 landfill is unlike municipal landfills

EPA's decision framework to evaluate applicability of the presumptive remedy to military landfills requires an affirmative answer to the following question: "*Do Landfill Contents Meet Municipal Landfill-Type Waste Definition?*" Specifically:

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[1] *Presumptive Remedy for CERCLA Municipal Landfill Sites*, U.S. Environmental Protection Agency, OSWER Directive 9355.0-49FS, September 1993.

[2] *Application of the CERCLA Municipal Landfill Presumptive Remedy to Military Landfills*, U.S. Environmental Protection Agency, OSWER Directive 9355.0-67FS, December 1996.

> "The...presence, proportion, distribution, and nature of waste are fundamental to the application of the containment presumptive remedy to military landfills. ...
>
> "[M]ost military landfills present only low-level threats with pockets of some high-hazard waste. However, some military facilities (e.g. ...major aircraft or equipment repair depots) have a high level of industrial activity compared to overall site activities. In these cases, there may be a higher proportion and wider distribution of industrial (i.e., potentially hazardous) wastes present than at other less industrialized facilities."[3]

As a major facility for maintenance and repair of ships and aircraft, Naval Air Station Alameda was a "major aircraft or equipment repair depot" when the IR Site 1 landfill was operational.

> "In the 1940s, as many as 1,500 planes, including seaplanes, were based at NAS Alameda. ... NARF [Naval Air Rework Facility Alameda] is the largest tenant at NAS Alameda, employing nearly 5,000 civilians and occupying all or part of 28 buildings (Figure 6-4). The primary function of NARF is the maintenance and reworking of aircraft under the command of the U.S. Pacific Fleet. ... [NAS Alameda] serves as one of only two deployment points for aircraft carriers on the West Coast."[4]
>
> "[The Navy] conducted a variety of operations at Alameda Point, including aircraft, engine, gun, and avionics maintenance; engine overhaul and repair; fueling activities; and plating, stripping, and painting activities."[5]
>
> "Materials reportedly disposed of at the [West Beach Landfill] included...solvents; oily waste and sludges; paint waste, strippers, thinners, and sludges; plating wastes; industrial strippers/cleaners; acids; mercury; polychlorinated biphenyl (PCB)-contaminated fluids and TAC rags; batteries; low-level radiological wastes...pesticides...infectious waste; creosote; and medicines and reagents. ... The material disposed of at [IR Site 1, Area 1a] was similar to the material disposed of at the West Beach Landfill."[6]

Thus, because the Area 1a landfill apparently received such a large contribution of hazardous industrial wastes, the containment remedy should not be presumed most appropriate. Trenching of the waste cells in Area 1a would resolve whether they are sufficiently similar to municipal landfills to use the presumptive remedy process.

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[3] *Application of the CERCLA Municipal Landfill Presumptive Remedy to Military Landfills,* U.S. Environmental Protection Agency, OSWER Directive 9355.0-67FS, December 1996, pp. 2 & 3. (emphasis added)
[4] *Initial Assessment Study of Naval Air Station, Alameda, California*, Ecology and Environment, Inc., April 1983, pp. 6-3, -10, & -32.
[5] *Final Site Inspection Report, Transfer Parcel EDC-3, Alameda Point, Alameda, California*, p. 1-2, Section 1.3, March 16, 2006. (emphasis added)
[6] *Initial Assessment Study of Naval Air Station, Alameda, California*, Ecology and Environment, Inc., April 1983, pp. 2-1 & 2-5.

Special conditions invalidate using the presumptive remedy approach

EPA's presumptive remedy process is poorly suited to deciding whether containment is the most appropriate remedy for Area 1a because of the environment within which the wastes are buried.

> "Site-specific conditions may limit the use of the containment presumptive remedy at military landfills. For example, high water tables, wetlands and other sensitive environments...could all be important factors in the selection of the remedy."[7]

Area 1a has a high water table—generally three to five feet below ground surface. The wastes were buried immediately above groundwater, because the trenches into which they were disposed were dug only to the water table. Approximately 18 acres of wetlands exist on IR Site 1, much of which is over the Area 1a waste cells. The sensitive shoreline of San Francisco Bay—the most environmentally important estuary on the U.S. Pacific coast—borders Area 1a. For these reasons alone, presumption of the containment remedy is inappropriate.

One result of applying EPA's presumptive remedy for municipal landfills to Area 1a is that a remedy can be selected even though the waste in the landfill has not been characterized. In response to ARRA's comment on the September 2006 Proposed Plan for IR Site 1—"Navy has never characterized wastes buried in the Area 1 landfill by sampling or other observation", the Navy noted that it had collected samples at 310 locations[8] for characterizing the disposal area. Unfortunately, none of these samples are of the waste material itself. In the face of important questions about the applicability of the presumptive remedy process, and with such serious consequences from selecting a remedy that is not protective, characterization of the waste is imperative.

Hazardous Industrial Wastes and Intact Drums Buried in Area 1a

Considerable uncertainty surrounds the presence of hazardous industrial wastes in Area 1a, especially wastes contained in drums that have yet to fail. Navy reports describe disposal of wastes, including drums, in Area 1a.

> "The disposal method used by Public Works personnel consisted of digging trenches to the water table, filling them with waste, and compacting the material with a bulldozer. Cover material was applied on an irregular basis. Combustion of waste drums occurred often during bulldozing operations, suggesting that flammable materials were disposed of in this area."[9]

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[7] *Application of the CERCLA Municipal Landfill Presumptive Remedy to Military Landfills,* U.S. Environmental Protection Agency, OSWER Directive 9355.0-67FS, December 1996, p. 3. (emphasis added)

[8] All quantities in this letter are displayed rounded to two significant digits for ease of reading. Unrounded quantities are used in all calculations.

[9] *Initial Assessment Study of Naval Air Station, Alameda, California*, Ecology and Environment, Inc., April 1983, p. 6-61.

This description not only establishes that drum disposal occurred in Area 1a and that waste was buried only above the water table, but it also suggests that little, if any, cover soil is mixed with the waste, potentially increasing its volume.

Historical records of fires at the Site 1 landfill indicate that some of the drums were ruptured during burial, but this was incidental to their disposal. Only later, after disposal of drummed waste had shifted to the successor landfill at IR Site 2, did the Navy intentionally rupture drums as part of the landfilling operation.

> "In the early years of operation, whole drums were buried at the [West Beach Landfill] (Figure 6-9). However, following three different fires caused by bulldozers running over full drums of apparently flammable material, all drums containing liquid waste were punctured and drained before being buried."[10]

The compressibility of wastes disposed in Area 1a would have varied widely. Accordingly, many drums would not have failed during burial because of the sponginess of the mass of wastes with which they were buried. Drums containing solids, rather than liquids, would have been even less likely to fail during burial in Area 1a. Serious environmental impacts can result from failure of drums containing solids, the same as with drums containing liquids, unless the waste solids are completely insoluble, which few are.

When the topic of intact drums potentially being present in Area 1a has arisen during Alameda Point BCT meetings, the Navy's response has been:

1. The drums were intentionally crushed during burial.
2. Wastes in Area 1a are largely submerged in groundwater. Because the groundwater has a high salt content, the drums likely have long since corroded to the point of failure in the 50 years or so since the wastes were buried, and contaminants have long since dissipated in the environment.

These points are inconsistent with the Navy's own description of how it buried its wastes in Area 1a.

1. There is no record of any drum-rupturing policy for drum burial in Area 1a. That practice began later, after landfilling had shifted to the successor landfill at IR Site 2, and even then only with respect to drums containing liquids.
2. Because the wastes were buried immediately above the water table, most of the waste is not in contact with groundwater. Further, some drums are constructed to resist corrosion because of the materials they are intended to contain. Accordingly, drums that did not fail at the time of burial may still be intact.

High concentrations of VOCs occur in a groundwater plume in the western portion of IR Site 1. The plume's highest concentrations are beneath one of the waste cells in Area 1a, suggesting a source there. Post-disposal failure of one or more buried drums containing solvent waste is the most probable source of this groundwater contamination. Aircraft parts storage and maintenance

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[10] *Initial Assessment Study of Naval Air Station, Alameda, California*, Ecology and Environment, Inc., April 1983, p. 6-49.

occurred in this area at one time, but this activity is less likely to be the source of such high contamination. Elsewhere on Alameda Point, aircraft parts storage and maintenance have not resulted in such high groundwater contaminant levels. Only major industrial facilities like IR Sites 4 and 5 typically cause such high contamination. Solvent released from a failed drum could account for the observed groundwater contamination.

Even if containment were the most appropriate remedy for Area 1a, the style of containment the *draft ROD* contemplates—a permeable, four-foot thick soil cover with no lateral containment—may not be suitable. It is impossible to make a reasoned decision about the most appropriate type of containment at Area 1a without accurately understanding the extent to which intact drums are still present. This understanding should be obtained by robust, intrusive investigation.

The FS's Estimated Cost for Complete Removal of Area 1 Waste Is Much Too High

The FS for IR Site 1 overestimates the cost for Alternative S1-5: Complete Removal. The FS's erroneous cost estimate derives from an anticipated waste volume that is likely much greater than actually exists in Area 1. This overestimation of costs may have been an important factor in the decision to leave the waste in place rather than to remove it.

Alternative S1-5 assumes that Area 1 (Area 1a plus Area 1b, which is the Burn Area) would be excavated and that all waste would be removed and disposed off-site. The estimated cost for this alternative is $92 million, much greater than the $16 million estimated cost for the alternative selected in the *draft ROD*—Alternative S1-4a: Removal of Waste from Area 1b, Soil Cover for Remainder of Area 1 and ICs. Most of Alternative S1-5's estimated cost—96 percent—is attributable to site excavation, off-site disposal, and backfilling. Accordingly, if less waste exists in Area 1 that would be excavated and hauled to an off-site disposal location, the cost of this alternative would be proportionately reduced. The FS assumes the total volume of buried waste in Area 1 is 200,000 cubic yards.[11]

Several methods are available for estimating the volume of waste in Area 1. The simplest method is to use the quantity provided in the RI—the quantity of solid wastes disposed of at Area 1 ranges from 15,000 tons to 200,000 tons.[12] At a refuse density of 1.4 tons/cubic yard[13], the volume of waste disposed in Area 1 ranges from 11,000 to 140,000 cubic yards. Thus, the FS erroneously assumes the amount of waste available for excavation and removal from Area 1 is at least 40 percent greater, and as much as 19 times greater, than the amount of waste the Navy believes it buried there. A proportionate adjustment of Alternative S1-5's cost estimate yields a cost range of $4.9 million to $66 million. As a best estimate for this method, the midpoint volume of the range of wastes disposed in Area 1 is 77,000 cubic yards, yielding an estimated cost of $35 million, 38 percent of the FS's cost estimate for this alternative.

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[11] *Final Feasibility Study Report, IR Site 1, 1943-1956 Disposal Area, Alameda Point, Alameda, California*, Volume 1, Part B, Bechtel Environmental, Inc., Appendix D, Table D-4.

[12] *OU-3 Remedial Investigation Report, Final, Volume I of III, Alameda Point, Alameda, California*, Navy, August 9, 1999, p. 6-4.

[13] *Final Feasibility Study Report, IR Site 1, 1943-1956 Disposal Area, Alameda Point, Alameda, California*, Volume 1, Part B, Bechtel Environmental, Inc., Appendix D, Table D-4.

A second method of estimating the volume of waste in Area 1 is to multiply the area of the landfill footprint by the thickness of the buried waste. This must be done separately for Areas 1a and 1b, because they may have different waste thicknesses, and the volumes added together.

Very little is known about Area 1b, so this letter uses the Navy's estimated 60,000 cubic yards[14], although this quantity seems high.

The volume of waste in Area 1a can be estimated using the following steps:

1. Area 1a has "seven 'cells' surrounded by access roads used for waste disposal (Pacific Aerial Surveys 1947 and 1949) with a total area of 14.7 acres...."[15] Directly measuring the area of the 'cells' on Figure 1-3 in the *draft ROD*, without the access roads, results in a net waste burial area of about 12 acres.
2. The waste in Area 1a was deposited in trenches excavated only as deep as the water table. Thus, the thickness of buried refuse in Area 1a can be estimated by subtracting the thickness of the soil cover from the depth to the water table. "[E]valuation found the soil cover thickness to range from less than 6 inches to 2.5 feet.... Depth to groundwater in the FWBZ at IR Site 1 ranges from ground surface to approximately 8 feet bgs and averages 3 to 5 feet bgs (cite)."[16] Subtracting the average cover thickness (1.4 feet) from the average depth to groundwater (4 feet) yields an average waste thickness of 2.6 feet.
3. Multiplying the net area of the waste cells by the average waste thickness yields a waste volume in Area 1a of 50,000 cubic yards.

Thus, the estimated volume of buried waste in Area 1 derived by this method is 110,000 cubic yards—50,000 cubic yards in Area 1a plus 60,000 cubic yards in Area 1b—slightly more than half of the volume assumed in the FS. A proportionate adjustment of Alternative S1-5's cost estimate yields a revised cost estimate of $50 million. This estimate is higher than the revised cost estimate resulting from the first method, probably because the 60,000 cubic yard value the FS uses for the volume of wastes in Area 1b is conservative. Were it not, the methods would probably coincide at approximately $35 million.

The volumes derived by these two methods—77,000 cubic yards and 110,000 cubic yards—are not so large as to make excavation impractical.

> "Although no set excavation volume limit exists, landfills with a content of more than 100,000 cubic yards...would normally not be considered for excavation. ... If excavation of the landfill contents is being considered as an alternative, the presumptive remedy should not be used."[17]

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[14] *Final Feasibility Study Report, IR Site 1, 1943-1956 Disposal Area, Alameda Point, Alameda, California*, Volume 1, Part B, Bechtel Environmental, Inc., Appendix D, Table D-4.
[15] *OU-3 Remedial Investigation Report, Final, Volume I of III, Alameda Point, Alameda, California*, Navy, August 9, 1999, p. 6-3.
[16] *Final Feasibility Study Report, IR Site 1, 1943-1956 Disposal Area, Alameda Point, Alameda, California*, Volume 1, Part A, Bechtel Environmental, Inc., pp. 2-15ff & 2-32.
[17] *Application of the CERCLA Municipal Landfill Presumptive Remedy to Military Landfills*, U.S. Environmental Protection Agency, OSWER Directive 9355.0-67FS, December 1996, p. 9.

The buried wastes in Area 1 likely are about 100,000 cubic yards or, more likely, less than 100,000 cubic yards, so excavation can and should be considered, and the presumptive remedy decisionmaking process should not be used. Of course, trenching or other intrusive investigation of Area 1 would provide definitive information with which to confidently estimate waste volumes.

To summarize this issue, the FS's estimated cost to excavate, remove, and dispose off-site all wastes in Area 1 is unrealistically high because the estimated waste volume upon which it's based is too high. The cost could be as little $4.9 million and as much as $66 million. The central tendency estimates arrived at by two independent methods are $35 million and $50 million. Without characterization of Area 1 to physically measure the waste thickness, higher cost estimates are too conservative and difficult to justify.

The FS Fails To Consider Consolidating Area 1a Wastes in an Onsite Landfill

On several occasions RAB members have proposed consideration of an alternative that consists of excavating Area 1 wastes and placing them in a properly designed onsite landfill, perhaps adjacent to IR Site 2. On its face, this proposal has merit. It achieves most of the protectiveness of Alternative S1-5 at a cost likely to be much less. Presumably the cost of constructing and monitoring a properly designed onsite landfill would be less than the cost of transporting and disposing of the same amount of waste in an off-site landfill. With this proposed alternative, the soil excavated to build the new landfill could be used as backfill in Area 1, resulting in further cost savings. Because of the substantial likelihood that this alternative is better than any others under consideration, not including it in remedial decisionmaking for Area 1 is a missed opportunity.

Summary and Conclusion

1. Remedial decisionmaking inappropriately follows EPA's presumptive remedy selection process for Area 1a. This process is not applicable because the Area 1a landfill is dissimilar to municipal landfills, the water table is very shallow, wetlands are present, and the landfill is located in a sensitive environment.
2. Drums of hazardous industrial wastes, which were buried in Area 1a, are probably still intact. This should be a fundamental presumption of the remedial decisionmaking unless robust, intrusive investigation indicates otherwise.
3. The FS's estimation of costs to excavate all Area 1 wastes with removal and off-site disposal (Alternative S1-5) is so high as potentially to lead to faulty remedial decisionmaking. Unless robust, intrusive investigation is completed to verify the amount of waste present in Area 1, the estimated cost for Alternative S1-5: Complete Removal should be lowered to about $35 million. This amount is about twice the cost of the preferred Alternative S4-1a--$16 million.
4. The alternative of consolidating Area 1 wastes in a properly designed, onsite landfill is not evaluated in the FS. This alternative has a substantial probability of being superior to any alternative considered.

5. Intrusive investigation of Area 1 should be conducted before remedial decisionmaking for IR Site 1 proceeds further. Trenching, for example, would provide important information about whether the landfill is similar to municipal landfills, the extent to which intact drums are present (and, if present, their contents), and the thickness and areal extent of the buried wastes for volume estimation. This investigation could be designed and implemented in a short period of time and would not be very expensive.

Thank you for considering ARRA's concerns about cleanup of this landfill and about the proposed Record of Decision. If you have any questions or need additional information, please call me at 510-749-5833.

Sincerely,

Debbie Potter
Base Reuse and Community Development Manager

cc: Dot Lofstrom, DTSC
Erich Simon, Water Board
Thomas Macchiarella
Peter Russell

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

July 10, 2007

Mr. Thomas Macchiarella, Code 06CA. TM
Department of the Navy
Base Realignment and Closure
Program Management Office West
1455 Frazee Road, Suite 900
San Diego, CA 92108-4310

Re: Review of the Draft Record of Decision for Installation Restoration Site 1, Alameda Point, Alameda, California, April 2006

Dear Mr. Macchiarella:

The U.S. Environmental Protection Agency (EPA) Region 9 has received the Draft Record of Decision (ROD) for Installation Restoration (IR) Site 1, Alameda Point, Alameda, California, dated April 11, 2007. On behalf of the regulatory agencies, DTSC requested a 30 day extension on the review period, making comments due July 10, 2007.

On June 25, 2007, the Alameda Reuse and Redevelopment Authority (ARRA) sent a letter to EPA raising concerns regarding data gaps for Area 1a. Given the significance of the concerns raised, and per the phone conversation between you and Ms. Anna-Marie Cook (the lead RPM for EPA at Alameda Point) on July 3, 2007, all parties agreed to extend the draft review period according to Section 14.2(g) of the FFA. Therefore, the regulatory review for the Draft ROD for IR Site 1 will end once the data gap concerns for Area 1a are resolved and we will forward our final comments on the draft document at that time. In the interim, we are sending you our draft comments which are enclosed with this letter.

We look forward to working with the Navy in addressing the data gap concerns at Area 1a, and moving to draft final on the IR Site 1 ROD.

If there are any questions, please feel free to contact me at (415) 972-3002.

Sincerely,

Xuan-Mai Tran
Remedial Project Manager
Federal Facilities and Site Cleanup Branch

cc: Andrew Baughman, BRAC PMO, West
Erich Simon, SFRWQCB
Dot Lofstrom, DTSC Sacramento
Peter Russell, Russell Resources, Inc.
Suzette Leith, EPA
John Chesnutt, EPA

Alameda Reuse and Redevelopment Authority
Interoffice Memorandum

3-B

July 18, 2007

TO: Honorable Chair and Members of the Alameda Reuse and Redevelopment Authority

FROM: Debra Kurita, Executive Director

SUBJ: Authorize PM Realty Group to Enter into a Contract with Clyde G. Steagall, Inc. for Construction Management Services for Pier 2 Electrical Upgrades at Alameda Point with a Total Project Cost Not to exceed $1,719,000

BACKGROUND

At the April 2006 ARRA meeting, the ARRA approved the 20-year sublease with the Maritime Administration (MARAD). In considering the lease, the ARRA reviewed a cashflow analysis for the project, which included approximately $1 million for electrical upgrades for Pier 2. The estimate was based on the cost for the upgrade for Pier 3, which was done in 2000-01. In order to absorb the cost for this project, it was budgeted across two fiscal years. However, because of the timing of ordering and receiving the electrical transformers, the project was delayed several months. In January 2007, the ARRA approved the design work for the project in order to be ready once the transformers arrived.

DISCUSSION

Under the construction contract, the contractor will provide services in three categories:

Electrical:
- Furnish/install the switchgear equipment
- Provide the receptacles and supports
- Provide the electrical conduit and conductors
- Provide the concrete switchgear pads/and concrete for the transformer pads
- Provide ship to shore cable (400 lf)

Structural:
- Install bollards
- Provide transformer shelter

Demolition:
- Remove existing electrical switchgear and transformers from vaults
- Remove existing cable tray in vaults
- Remove existing receptacle mounds
- Remove existing conductors
- All demolished materials to be disposed of off-site except for existing AP&T transformers.

Bids for this work were issued on October 18, 2006, and two bids were received, from Clyde G. Steagall and Cornerstone Select. The bid comparison is attached.

The cost estimate for this project in the cashflow was underestimated because it was based on the cost for Pier 3. Pier 2 is considerably longer than Pier 3 and requires more transformers, more concrete work, and more supplies. In addition, Pier 2 is moving from an underground electrical service to an above ground service, which requires more construction for housing and securing the units. To accommodate the cost, $400,000 saved from the PM Realty contract in fiscal year 2006-07 will be allocated to the pier project. As the project was originally budgeted in years one and two of the lease, $900,000 has already been budgeted and also will be applied to the project. The remaining $310,000 will come from reallocating maintenance priorities with the MARAD footprint ($150,000 in year one for fendering repairs, $100,000 in insurance, $60,000 in pier maintenance/repair).

BUDGET CONSIDERATION / FINANCIAL IMPACT

The total project cost is $1,719,000. Of this total, $109,000 will come from ARRA lease revenue as approved in January 2007; $400,000 will come from PM Realty property management cost savings; $900,000 will come from ARRA lease revenue budget for electrical system upgrade, and $310,000 will come from savings in the MARAD cashflow.

RECOMMENDATION

Authorize PM Realty Group to enter into a contract with Clyde G. Steagall, Inc. for construction management services for Pier 2 Electrical Upgrades at Alameda Point with a total project cost not to exceed $1,719,000.

Respectfully submitted,

Leslie Little
Development Services Director

By: Nanette Banks
Finance & Administration Manager

Attachment: Bid Comparison

DK/LAL/NB:dc

PM REALTY GROUP
CONFIDENTIAL BID FORM
PIER 2 - ELECTRICAL UPGRADE
ALAMEDA POINT, CALIFORNIA

PM REALTY GROUP			
Project	Pier 2 Electrical Upgrade	Mike Steagall	Paul Qualls
Location	Alameda Point	916-652-1700	510-490-7911
		Clyde G Steagall Inc	*Cornerstone Select*
PHASE CODE	**DESCRIPTION**	**AMOUNT**	**AMOUNT**
	DIVISION 01 GENERAL REQUIREMENTS		
01043-10	SUPERVISION	$10,000.00	$219,375.00
01060-10	PERMIT FEES	N/A	N/A
01510-20	TEMPORARY PHONE	N/A	$1,600.00
01560-10	ROUGH CLEAN-UP	N/A	$18,000.00
01560-20	DEBRIS BOXES / ROLL-OFF DUMPSTERS	N/A	$16,000.00
01560-30	DUST PROTECTION/BARRICADE	N/A	$3,500.00
	MISC. (GENERAL CONDITIONS - List on separate page)	N/A	$325,466.00
	INSURANCE	Included	$52,028.75
	TAXES	Included	
	MALL FEE SCHEDULE	N/A	
	SUBTOTAL	***$10,000.00***	***$635,969.75***
	DIVISION 02 SITE WORK		
02070-	DEMOLITION	$75,000.00	$8,700.00
02075-10	SAW CUT	N/A	$13,800.00
	SUBTOTAL	***$75,000.00***	***$22,500.00***
	DIVSION 03 CONCRETE		
03330-	CONCRETE SLA	$40,000.00	$96,344.00
03368-10	CONRETE CUT & PATCH	N/A	$13,800.00
	Ground penetrating radar (Rebar scanning)		$18,300.00
	SUBTOTAL	***$40,000.00***	***$128,444.00***
	DIVISION 05 METALS		
05050-	TESTING LAB SERVICE	N/A	$2,500.00
05120-	STRUCTURAL STEEL	$81,600.00	$55,650.00
05510-	MISC. STEEL	N/A	$54,030.00
05520-	STEEL HANDRAILS, RAILINGS	N/A	$4,800.00
	Sheet metal siding		$47,650.00
	SUBTOTAL	***$81,600.00***	***$164,630.00***
	DIVISION 06 WOOD & PLASTICS		
06050-10	ROUGH HARDWARE	N/A	N/A
06110-20	WOOD BACKING	N/A	N/A
06116-	PLYWOOD SUBFLOOR	N/A	N/A
06200-	FINISH CARPENTRY/MILLWORK	N/A	N/A
06229-10	WOOD BASE	N/A	N/A
06250-	FRP WAINSCOT	N/A	N/A
06255-50	FLOOR PROTECTION	N/A	N/A
	SUBTOTAL	***$0.00***	***$0.00***

PM REALTY GROUP
CONFIDENTIAL BID FORM
PIER 2 - ELECTRICAL UPGRADE
ALAMEDA POINT, CALIFORNIA

PM REALTY GROUP			
Project	Pier 2 Electrical Upgrade	Mike Steagall	Paul Qualls
Location	Alameda Point	916-652-1700	510-490-7911
		Clyde G Steagall Inc	*Cornerstone Select*
PHASE CODE	**DESCRIPTION**	**AMOUNT**	**AMOUNT**
	DIVISION 07 THERMAL & MOISTURE PROTECTION		
07100-	WATERPROOFING	N/A	$10,880.00
07212-10	BATT INSULATION	N/A	N/A
07240-	DRYVIT/E.I.F.S./STO SYSTEM	N/A	N/A
07255-	FIREPROOFING	N/A	N/A
07505-	ROOF CUTTING & PATCHING	N/A	N/A
07510-	ROOFING - WEATHERPROOF ENCLOSURE	N/A	$8,000.00
07620-	SHEET METAL FLASHING/TRIM	N/A	$4,800.00
07900-10	CAULKING	N/A	$0.00
	SUBTOTAL	***$0.00***	***$23,680.00***
	DIVISION 08 DOOR & WINDOWS		
08100-10	METAL DOORS & FRAMES	$6,800.00	$4,800.00
08210-10	WOOD DOORS & JAMBS	N/A	N/A
08305-	ACCESS PANELS	N/A	N/A
08410-	GLASS/GLAZING	N/A	N/A
08700-10	FINISH HARDWARE	$1,200.00	$500.00
	SUBTOTAL	***$8,000.00***	***$5,300.00***
	DIVISION 09 FINISHES		
09215-	LATH & PLASTER	N/A	N/A
09260-	METAL STUDS & DRY WALL	N/A	$1,000.00
09310-	CERAMIC TILE	N/A	N/A
09460-	STONE FLOOR	N/A	N/A
09518-	ACOUSTICAL TILE CEILING	N/A	N/A
09567-	WOOD FLOORING	N/A	N/A
09650-	RESILIENT FLOORING	N/A	N/A
09678-	RESILIENT BASE	N/A	N/A
09679-	RUBBER TREADS & NOSINGS	N/A	N/A
09685-	CARPET	N/A	N/A
09900-	PAINTING	N/A	$7,500.00
	SUBTOTAL	***$0.00***	***$8,500.00***
	DIVISION 10 SPECIALITIES		
10260-	CORNER GUARDS	N/A	N/A
10430-	SIGNS	$250.00	N/A
10430-	LAVATORY SIGNS	N/A	N/A
10522-10	FIRE EXTINGUISHERS	N/A	N/A
10536-	AWNINGS	N/A	N/A
	LADDER	N/A	N/A
10800-10	RESTROOM ACCESSORIES	N/A	N/A
	SUBTOTAL	***$250.00***	***$0.00***

PM REALTY GROUP
CONFIDENTIAL BID FORM
PIER 2 - ELECTRICAL UPGRADE
ALAMEDA POINT, CALIFORNIA

PM REALTY GROUP			
Project	Pier 2 Electrical Upgrade	Mike Steagall	Paul Qualls
Location	Alameda Point	916-652-1700	510-490-7911
		Clyde G Steagall Inc	*Cornerstone Select*
PHASE CODE	DESCRIPTION	AMOUNT	AMOUNT
	DIVISION 11 EQUIPMENT		
11425-		N/A	N/A
11425-10		N/A	N/A
11425-10		N/A	N/A
	SUBTOTAL	***$0.00***	***$0.00***
	DIVISION 12 FURNISHINGS		
12690-10		N/A'	N/A'
	SUBTOTAL	***$0.00***	***$0.00***
	DIVISION 14 CONVEYING SYSTEMS		
14200-	ELEVATORS	N/A	N/A
14550-	CONVEYORS	N/A	N/A
	SUBTOTAL	***$0.00***	***$0.00***
	DIVISION 15 MECHANICAL		
15330-	FIRE SPRINKLERS	N/A	N/A
15400-	PLUMBING	N/A	$2,800.00
15650-	H.V.A.C. INSTALLATION & DISTRIBUTI	N/A	N/A
15940-01	DIFFUSERS & GRILLS	N/A	$975.00
15980-	BALANCING	N/A	N/A
	SUBTOTAL	***$0.00***	***$3,775.00***
	DIVISION 16 ELECTRICAL		
16000-	ELECTRICAL	$1,101,378.00	$1,523,058.00
16001-	ELECTRICAL, TEMPORARY	N/A	N/A
16500-01	LIGHT FIXTURES & LAMPS	N/A	N/A
16722-	FIRE ALARM SYSTEM	N/A	N/A
16700-	STEREO (Equip. by Owner)	N/A	N/A
	Crane for demo of existing transformers and equipment		$61,680.00
	Misc: Credit Back for Salvage		-$200,800.00
	SUBTOTAL	***$1,101,378***	***$1,383,938***
	OVERHEAD & PROFIT		***$324,100.47***
TOTAL		**$1,316,228**	**$2,700,837**
VOLUNTARY ALTERNATES/ALLOWANCES: (INCLUDES OVERHEAD & PROFIT)			
CONCRETE X-RAY		$ 7,200.00	

PM REALTY GROUP
CONFIDENTIAL BID FORM
PIER 2 - ELECTRICAL UPGRADE
ALAMEDA POINT, CALIFORNIA

PM REALTY GROUP			
Project	Pier 2 Electrical Upgrade	Mike Steagall	Paul Qualls
Location	Alameda Point	916-652-1700	510-490-7911
		Clyde G Steagall Inc	*Cornerstone Select*
PHASE CODE	DESCRIPTION	AMOUNT	AMOUNT

Alameda Reuse and Redevelopment Authority
Interoffice Memorandum

3-C

July 18, 2007

TO: Honorable Chair and Members of the Alameda Reuse and Redevelopment Authority

FROM: Debra Kurita, Executive Director

SUBJ: Approve a Contract with Universal Protection Service in an Amount Not to Exceed $200,000 for Private Security Service at Alameda Point.

BACKGROUND

The Alameda Reuse and Redevelopment Authority's (ARRA) Lease in Furtherance of Conveyance with the Navy holds the ARRA responsible for the operation, protection, maintenance, and repair of the leased premises at Alameda Point. At the April 5, 2006, ARRA meeting, staff reported on security issues related to the historic structures at Alameda Point. At that meeting, the ARRA approved purchasing Sentinel Alarm systems for placement in the vacant buildings. The alarm systems are coordinated with the Alameda Police Department (APD) and have been effective, leading to several arrests in the areas where the alarms are installed. During Fiscal Year 2006-2007, the ARRA also spent $54,786 on new fencing and chained doors with screwed plywood-covered openings. Despite these security measures, the property continues to experience incidents of intrusion and vandalism.

DISCUSSION

During the past year, ARRA staff has coordinated crime prevention strategies closely with the APD. At the recommendation of the police department, security fencing was installed at strategic entry points of vacant buildings, and property maintenance staff photographs graffiti before painting over it and provides those pictures to the police department. Property managers for PM Realty, the company that manages Alameda Point for the ARRA, also perform early morning patrols of the property and alert the police department if they see any suspicious activity.

In addition to these existing security measures, the APD also recommended employing a private security company to patrol the property. Staff solicited proposals for this service and received three responses, from Bay Alarm, Securitas, and Universal Protection Services.

	Monthly	Annually
Bay Alarm	$36,500	$438,000
Securitas	$15,285	$183,420
Universal Protection Services	$15,773	$189,280

Staff recommends contracting with Universal Protection Services. While the Universal bid is approximately $6,000 higher than the lowest bid, Universal has previously worked at Alameda

Point and is familiar with the property and its potential "hotspots." The company has also taken a hands-on approach in addressing Alameda Point's security needs. For example, Universal has suggested that instead of always using car patrols, they could periodically substitute bicycle patrols, which would be both less expensive for the ARRA and more effective in reaching areas not accessible by vehicles.

While the proposal for services is $189,280, staff recommends an appropriation of $200,000 to allow for special occasions and holidays when additional security may be needed. The Alameda Police Department will confer with Universal Protection Services to ensure maximum coordination and protection of the property. The $189,279 cost is much lower than the $600,000 spent annually by the Navy under the Cooperative Services Agreement in 1998. Under that agreement, guards were stationed at the gate 24-hours a day, and there were two nighttime rovers.

BUDGET CONSIDERATION/FINANCIAL IMPACT

This contract will result in $189,279 in expenditures from the ARRA fund. An appropriation of $200,000 will allow for additional security as needed.

RECOMMENDATION

Approve a contract with Universal Protection Service in an amount not to exceed $200,000 for private security service at Alameda Point.

Respectfully submitted,

Leslie Little
Development Services Director

By: Nanette Banks
Finance & Administration Manager

Concur: Walter B Tibbet
Chief of Police

CITY OF ALAMEDA • CALIFORNIA

SPECIAL JOINT MEETING OF THE CITY COUNCIL,
ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY (ARRA), AND
COMMUNITY IMPROVEMENT COMMISSION (CIC)
WEDNESDAY - - - JULY 18, 2007 - - - 7:01 P.M.

Location: **City Council Chambers**, City Hall, corner of Santa Clara Avenue and Oak Street.

Public Participation
Anyone wishing to address the Council/Board/Commission on agenda items or business introduced by the Council/Board/Commission may speak for a maximum of 3 minutes per agenda item when the subject is before the Council/Board/Commission. Please file a speaker's slip with the Deputy City Clerk if you wish to speak.

PLEDGE OF ALLEGIANCE

1. ROLL CALL - City Council, ARRA, CIC

2. AGENDA ITEM

2-A. Recommendation to Approve Exclusive Negotiation Agreement (ENA) between ARRA, CIC, City of Alameda (Alameda) and SCC Alameda Point, LLC (SunCal).

3. ADJOURNMENT - City Council, ARRA, CIC

Beverly Johnson, Mayor
Chair, Alameda Reuse and
Redevelopment Authority and
Community Improvement Commission

CITY OF ALAMEDA
Memorandum

To: Honorable Chair and Members of the Alameda Reuse and Redevelopment Authority

Honorable Chair and Members of the Community Improvement Commission

Honorable Mayor and Members of the City Council

From: Debra Kurita
Executive Director/City Manager

Date: July 18, 2007

Re: Exclusive Negotiation Agreement for Alameda Point Between the Alameda Reuse and Redevelopment Authority, the Community Improvement Commission, the City of Alameda, and SCC Alameda Point, LLC (SunCal)

BACKGROUND

On September 21, 2006, Alameda Point Community Partners (APCP) notified the Alameda Reuse and Redevelopment Authority (ARRA) that it was withdrawing as the Alameda Point Master Developer five years after it was selected. APCP cited a downturn in the residential real estate market that no longer supported the $108.5 million land purchase price tentatively negotiated with the Navy as its primary reason for not moving forward. Following APCP's withdrawal from the project, the Navy agreed to an ARRA-sponsored process to identify a new master developer. The Navy's agreement was predicated on a timely process and retention of the $108.5 million purchase price and the previously agreed upon payment schedule contained in the draft conveyance term sheet.

At its October 4, 2006, meeting, the ARRA authorized staff to issue a Request for Qualifications (RFQ) to determine if there were developers interested in becoming the new Alameda Point Master Developer (Master Developer). SunCal responded to the RFQ through initial and subsequent responses. On May 8, 2007, the ARRA selected SunCal as its preferred Master Developer and established a 60-day due diligence and Exclusive Negotiation Agreement (ENA) negotiation period.

The 60-day due diligence period began on May 14 and concluded on July 12. During that period, SunCal established a comprehensive database on Alameda Point built on historic and current documents, studies, ordinances, resolutions, and policies related to

the base. Items provided to SunCal ranged from Navy environmental clean-up documents and ARRA leases to historic preservation studies and wetlands delineation maps. SunCal summarized each document received as part of its due diligence exercise. In addition, SunCal met with staff and ARRA consultants for briefings on affordable housing, historic preservation, fiscal neutrality, the Public Trust, the Biological Opinion, environmental clean-up activities and status, and leasing activity. Staff also facilitated informational meetings between SunCal and the Navy as well as environmental regulators. Simultaneous with this due diligence effort, SunCal worked with staff to negotiate an ENA as discussed below.

DISCUSSION

The purpose of the ENA is to (1) define the redevelopment and entitlement of the Alameda Point project site; (2) provide a framework for the negotiation of a Disposition and Development Agreement (DDA) for Alameda Point; and (3) establish a process for negotiating and executing various other transaction documents, such as California Environmental Quality Act (CEQA) documents, and third-party agreements like the Finalized Navy Term Sheet. The ENA is attached.

Staff and SunCal met on numerous occasions over the last 60 days to negotiate the provisions of the ENA. The following summarizes the major terms of the agreement:

1) **Length of Term**. The term of the ENA, including completion of CEQA review, all entitlements, and a DDA, is 24 months. A "progress extension" is automatically provided if: (i) all mandatory milestones have been achieved; (ii) review of the Project under CEQA is in process; and (iii) a complete Entitlement Application has been submitted and is pending before the City. The extension will continue until Alameda takes action on the Entitlement Application or, if slowed by litigation, until litigation on the project is resolved. A one-year extension may also be considered by mutual agreement of the ARRA Board and SunCal.

2) **Schedules of Performance**. The ENA provides Schedules of Performance that include all mandatory and non-mandatory milestones. Mandatory performance milestones consist of specific SunCal submittals, such as Development Concept, Infrastructure Plan, Business Plan, and Entitlement Application. Mandatory milestones must be completed within specified timelines and are subject to administrative extensions within the overall time frame of the ENA. A midpoint Conditional Acquisition Agreement (CAA) is an optional task and can be pursued if desired by SunCal. The CAA is not a required milestone and will not affect the completion of the mandatory milestones.

   Third-party agreements are non-mandatory milestones. If any third-party agreement, such as special legislation for Tidelands Trust, is not finalized before

the DDA is approved, then the DDA will outline performance milestones for finalizing any outstanding third-party agreements and any remedies for not meeting those milestones. Exhibit B of the ENA outlines the proposed timelines for both mandatory and non-mandatory milestones. Additionally, the ENA requires that SunCal submit a Project Master Schedule to the ARRA within 30 days of execution of the ENA and on a quarterly basis thereafter.

3) **Initial Payment and Cost Recovery**. SunCal paid $100,000 to the ARRA at the commencement of the ENA negotiations, and within five days of execution of the ENA, will pay an additional $900,000 to the ARRA for a total of $1 million. The deposit will be placed in an interest-bearing account and will be applied to the land purchase price, if the project site is conveyed to the Developer. If SunCal defaults under the terms of the ENA or terminates this agreement, it forfeits any right to the $1 million.

   The ENA also includes cost recovery provisions that require SunCal to reimburse the ARRA for its pre-development costs, including third-party consultant and legal costs and ARRA staff time. The ENA also outlines provisions for amending the budget, as necessary. Exhibit C of the ENA is the proposed cost recovery Annual Budget, which is estimated at $2.7 million over the 24-month term of the ENA. SunCal estimates that it will expend approximately $10 million during the ENA period.

4) **Project Labor Agreement**. SunCal has agreed to negotiate in good faith to enter into a project labor agreement for the construction trades.

5) **Fiscal Neutrality**. The ENA includes provisions for the mitigation of any adverse impacts of the project on the current and future General Fund budget. In addition, the provision in the ENA related to the use of tax increment financing places a priority on the Community Improvement Commission (CIC) and ARRA honoring their debt and operating expense obligations before tax increment funding flows to the project.

6) **Project Pro Forma**. The required components of the Project Pro Forma, jointly prepared by Alameda and SunCal, are outlined in the ENA and include provisions related to profit participation and the Internal Rate of Return (IRR). As currently proposed, the IRR shall be based on all appropriate costs, with eligible costs to be negotiated at a later date, and achieve a 20 to 25 percent return to developer, provided, however, that the precise IRR shall be subject to negotiation of the parties as part of the DDA. Additionally, any profit participation by the CIC from the project, if public tax increment financing is used, will occur after SunCal receives the IRR negotiated as part of the DDA.

7) **Existing City Leases/Uses**. There are four existing City uses specified in the ENA that will be continued after transfer of the land from the CIC to SunCal. These uses include City Hall West (Building 1), Fire Station #5 (Building 6), Alameda Power & Telecom Headend (Building 2, Wing 3), and the O'Club (Building 60). If SunCal decides to redevelop any of these buildings, it will be responsible for relocating the public use to a comparable facility at its sole expense. Other existing City uses or leases may be included in the final development plan but will be negotiated as part of the DDA.

8) **Transfers**. As stated in the RFQ process, SunCal does not self-finance development projects, but instead seeks equity funds from third-party partners. While SunCal may invest some equity funds into the project, its primary contribution to the project will be expertise and experience successfully facilitating complex development projects. Given this partnership structure, it is crucial for SunCal that the ENA allow for an automatic transfer to a developer entity that will include SunCal and its third-party equity partner, subject to certain terms and conditions to which all parties can agree. The resulting ENA has terms and conditions that allow automatic transfers while protecting Alameda's long-term interest and investment in Alameda Point.

There are three major components of the agreed upon terms and conditions of the automatic transfer provision:

(i) **Financial Stake**. It is important that SunCal have sufficient financial stake in the project to create an incentive for it to remain committed to the project. The ENA states SunCal must contribute at least 15 percent of the cash capital required to fund the pre-development phase of the project, and at least five percent of the equity required for funding the full implementation of the project, subject to further negotiation in the DDA.

(ii) **Day-to-Day Management and Control**. The ARRA selected SunCal through a competitive RFQ process and will be assured that the SunCal principals represented to the ARRA as the project leadership and team remain in control of the day-to-day management of the project. The ENA does not allow SunCal to be removed from day-to-day control of the project unless the replacement project management entity is acceptable to the ARRA.

(iii) **Removal of Developer**. The ARRA selected SunCal based on its specific qualifications and expertise. Therefore, the ENA states that the ARRA must consent to the removal of SunCal during the pre-development phase, and that the DDA will specify the terms of a

"qualified developer" for potential replacement of SunCal during project implementation.

Upon execution of the ENA, SunCal will commence its 24-month process to achieve the milestones outlined in the ENA Schedule of Performance.

BUDGET CONSIDERATION/FINANCIAL IMPACT

There is no financial impact on the General Fund, CIC, or ARRA budgets. The cost recovery provision in the ENA will ensure that the selected developer pays for staff costs and consultant expenses.

RECOMMENDATION

Approve the Exclusive Negotiation Agreement with SCC Alameda Point, LLC.

Respectfully submitted,

Leslie A. Little
Development Services Director

By: Debbie Potter
Manager, Base Reuse & Community Development Division

By: Jennifer Ott
Redevelopment Manager

LAL/DP/JO:sb

Attachment
1. Alameda Point Exclusive Negotiation Agreement

ALAMEDA POINT
EXCLUSIVE NEGOTIATION AGREEMENT

THIS ALAMEDA POINT EXCLUSIVE NEGOTIATION AGREEMENT (this "**Agreement**") is entered into as of July ____, 2007 (the "**Effective Date**"), by and between the **ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY**, a Joint Powers Authority established by the City of Alameda and the Community Improvement Commission under the California Joint Exercise of Powers Act and a public entity lawfully created and existing under the State of California (the "**ARRA**"), the **COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA**, a public body corporate and politic (the "**CIC**"), and the **CITY OF ALAMEDA**, a municipal corporation (the "**City**", and together with ARRA and CIC, "**Alameda**") and **SCC Alameda Point LLC, a Delaware limited liability company** ("**Developer**"). Alameda and Developer are individually referred to as a "**Party**" and collectively referred to as the "**Parties**".

RECITALS

This Agreement is entered into upon the following facts, understandings and intentions of the Parties:

A. The United States of America, acting by and through the Department of the Navy ("**Navy**") is the owner of certain real property located within the City of Alameda, State of California commonly referred to as the former Alameda Naval Air Station, now known as "**Alameda Point**", which was closed as a military installation and is subject to disposal pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1991, as amended (Pub. Law No. 101-510). The property that is the subject of this Agreement consists of approximately 1000 acres located at Alameda Point referred to as "**Phase 1**", "**Phase 2**" (including the area commonly known as the "Northwest Territories"), and "**Phase 3**" (which is included strictly for purposes of entitlement at a programmatic level) (collectively, the "**Project Site**"). Phase 1, Phase 2 and Phase 3 are shown on the "**Map of the Project Site**", attached hereto as Exhibit A. Phase 1 and Phase 2 are sometimes referred to collectively as the "**Property**". Certain portions of Alameda Point are not part of the Project Site.

B. In accordance with procedures established under federal and California state law governing the planning, disposition and reuse of closed military bases, ARRA adopted the Alameda Point Community Reuse Plan (the "**Community Reuse Plan**") on January 31, 1996, with subsequent amendments in 1997.

C. On March 3, 1998, the City Council of the City approved and adopted (1) the Community Improvement Plan (the "**APIP Community Improvement Plan**") for the Alameda Point Improvement Project (the "**APIP Project**") by Ordinance No. 2754. The property subject to the APIP Community Improvement Plan is referred to herein as the "**APIP Project Area**". The Project Site is located within the APIP Project Area.

D. Subsequently, in October 1999, the Navy issued a Final Environmental Impact Statement for the Disposal and Reuse of Naval Air Station Alameda and the Fleet and Industrial

Supply Center, Alameda Annex and Facility. The Record of Decision regarding the disposal and reuse was issued by the Navy on February 29, 2000.

E. The Navy and ARRA entered into a Lease in Furtherance of Conveyance dated June 6, 2000, as amended by that certain Amendment No. 1 to the Lease in Furtherance of Conveyance between the United States of America and the Alameda Reuse and Redevelopment Authority for the Former Naval Air Station Alameda, dated November 28, 2000 (the "**LIFOC**"), and a No-Cost Economic Development Conveyance Memorandum of Agreement dated June 6, 2000 (the "**EDC MOA**").

F. In 2003, the City amended its General Plan to incorporate the policies and land use designations contained in the Community Reuse Plan. The allowable number of residential units and commercial square footage differed from those contained in the ARRA's 1998 EDC application. As a result, the Navy questioned whether ARRA remained eligible for a No-Cost EDC. In lieu of submitting an amendment to the No-Cost EDC application, ARRA elected to negotiate a "For-Cost" EDC with the Navy.

G. In 2004, ARRA committed $3.5 million to a pre-development effort to: (1) prepare a land plan in conjunction with the community that would identify key entitlement issues and provide more certainty to the project approval process and which culminated in the Alameda Point Preliminary Development Concept dated February 1, 2006, prepared by ROMA Design Group (the "**PDC**"); and (2) negotiate a draft conveyance term sheet ("**Draft Navy Term Sheet**") with the Navy.

H. On October 4, 2006, ARRA authorized a Request for Qualifications ("**RFQ**") process to select a developer willing to redevelop the Project Site. SCC Acquisitions, Inc., a California corporation ("**SCC Acquisitions**"), an affiliate of Developer, responded to the RFQ through an initial response on or about December 4, 2006 and through a subsequent response on March 8, 2007 (the "**Developer Response**").

I. On May 8, 2007, based on the Developer Response, ARRA selected SCC Acquisitions to have an exclusive 60-day due diligence period (the "**Due Diligence Period**") to determine its interest in becoming the new master developer of the Project Site and entering into this Agreement.

J. On May 14, 2007, ARRA and SCC Acquisitions dba SunCal Companies entered into that certain Alameda Point Memorandum of Agreement (the "**Developer MOA**"), which, among other things, established a sixty (60) day period for the negotiation of this Agreement.

K. The purposes of this Agreement are to (1) define the redevelopment and entitlement of the Project Site (the "**Project**") (2) provide a framework for the negotiation of the terms of a Disposition and Development Agreement (the "**DDA**") for the Project and the Property, and (3) establish timeframes for and to set forth the process by which the Parties shall negotiate and execute the DDA and the Transaction Documents (as defined in Section 3 below).

In consideration of the mutual covenants contained herein, Alameda and Developer agree as follows:

Section 1. Negotiations.

1.1 Good Faith Negotiations. The Parties, during the Exclusive Negotiation Period set forth in Section 2.1 of this Agreement, shall negotiate diligently and in good faith to prepare the Transaction Documents (as defined in Section 3 below) and complete the tasks set forth in Section 3 below relating to the Project and the Project Site.

1.2 Exclusive Negotiations. During the Exclusive Negotiation Period, Alameda covenants and agrees that it shall negotiate exclusively with Developer regarding the Project and the Project Site and shall not solicit, market to or negotiate with any other person or entity regarding the Project and the Project Site or solicit or entertain bids or proposals to do so; except that Alameda may, in the routine course of governmental affairs, contact (or be contacted by), discuss, or meet with the Navy or any other governmental entity or Alameda may respond to inquiries regarding Phase 3, and Developer acknowledges that such contact, discussions, meetings, or responses may pertain in whole, or in part, to the Project and/or the Project Site. The Parties acknowledge that the Navy may, in its discretion, pursue an alternative disposition of the Phase 3 portion of the Project Site.

1.3 Not a DDA. The Parties do not intend this Agreement to be a DDA, purchase agreement, ground lease, license, option or similar contract.

Section 2. Term.

2.1 Term of this Agreement. The term of this Agreement (the "**Exclusive Negotiation Period**") shall commence on the Effective Date and, subject to extension pursuant to Section 2.2 below, shall terminate on the second anniversary of the Effective Date.

2.2 Extension of the Exclusive Negotiation Period.

2.2.1 Mutual Extension. The Parties acknowledge that their ability to prepare the Transaction Documents and complete the tasks set forth in Section 3 below is dependent to some extent on reaching agreement with certain third parties, including the Navy (for the transfer of the Property) and the California State Lands Commission (with respect to the public trust), and may also be dependent on achieving certain regulatory approvals and satisfying certain other conditions that are outside of their control. If before the execution of the DDA by the Parties, any of such third-party agreements, regulatory approvals or other conditions are not finalized, obtained or satisfied, then to the extent practical the Parties shall in good faith negotiate the DDA and characterize such third-party agreements, regulatory approvals or other conditions as conditions precedent to the obligations of the Parties to the close of escrow for conveyance of the Property pursuant to the DDA. Notwithstanding the foregoing, if the Parties are unable to meet the date for completion of the Non-Mandatory Milestone (as defined in Section 4.3 below) for the DDA set forth on the Schedule of Performance (Non-Mandatory Milestones) attached hereto as Exhibit B-2 (the "**Non-Mandatory Milestone Schedule of Performance**") due to the inability of the Parties to complete a Transaction Document because of the action(s) or inaction(s) of a third party, then the Exclusive Negotiation Period may be extended up to one (1) year by the mutual agreement of Developer and Alameda (as determined by its Board of Directors, Board of Commissioners and City Council).

2.2.2 Progress Extension. If Alameda can make the following findings (as determined by its Board of Directors, Board of Commissioners and City Council): (a) that Developer has met all of the Mandatory Milestones (as defined in Section 4.2 below), as the same have been extended as provided herein, or except to the extent the Mandatory Milestone for the Project Pro Forma (as defined in Section 3.2.4 below) has been waived by Alameda pursuant to Section 4.2.2 below; (b) Developer has provided a Project description sufficient to permit the City to review the Project under the California Environmental Quality Act (Public Resources Code §§ 21000-21177) ("**CEQA**"); and (c) Developer's Entitlement Application (defined in Section 3.2.6 below) has been filed with the City, the Exclusive Negotiation Period shall be extended automatically until Alameda has made its final determination with respect to the approvals requested in the Entitlement Application and the period for any legal challenge thereto has passed without such challenge, or if such challenge has been made, such challenge has been fully and finally resolved.

2.2.3 Litigation Force Majeure Extension. The Exclusive Negotiation Period shall be extended automatically in the manner provided in Section 5 below.

2.3 Expiration of the Term of this Agreement. This Agreement shall automatically terminate upon the earlier of (i) the effective date of a Conditional Acquisition Agreement (the "**CAA**") (as described in Section 3.3 below) executed by the Parties, or (ii) expiration of the Exclusive Negotiation Period, as extended pursuant to Section 2.2 above, and neither Party shall have any further right or obligation under this Agreement except with respect to any obligation which expressly survives the termination or expiration of this Agreement.

Section 3. Tasks to be Completed. During the Term, Alameda (or the applicable constituent thereof) and Developer shall negotiate diligently and in good faith the following agreements or documents and use commercially reasonable efforts to complete the following tasks within the time periods provided in the Schedules of Performance (as defined in Section 4.1 below) as the same may be amended pursuant to Section 2.2 above. The term "**Transaction Documents**" shall include all documents, plans and agreements described in this Section 3.

3.1 Finalized Navy Term Sheet. Developer shall participate with Alameda to negotiate with the Navy to finalize the Draft Navy Term Sheet, setting forth the terms and conditions for the conveyance of Alameda Point to ARRA, in a manner satisfactory to Alameda and Developer (the "**Finalized Navy Term Sheet**"), which shall, to the extent possible, be consistent with the Plans (as defined in Section 3.2 below) and other objectives contained herein.

3.2 Project Planning. Developer, at its sole cost, but subject to review and comment by Alameda, shall generate the necessary analysis, plans, studies and pro formas to be able to fully describe all aspects of the proposed Project and to prepare the DDA (and, if applicable, a CAA). Developer shall work with and make presentations to staff, elected and appointed representatives of Alameda, other governmental entities and community stakeholder groups as mutually determined by the Parties to permit preparation of the DDA (and, if applicable, a CAA). The purposes of these presentations will be to keep decision makers abreast of the process and to solicit input from key stakeholders regarding the plan. The final DDA (and, if applicable, a CAA) shall be based on and incorporate the following plans (collectively, the "**Plans**") and the Project Pro Forma (as defined in Section 3.2.4 below):

3.2.1 Development Concept. Developer shall prepare a "**Development Concept**" setting forth conceptual designs for the Project and Project Site and a fully descriptive program of uses. The Development Concept shall include an update of that certain Sports Complex Master Plan prepared by Moore Iacofano Goltsman, Inc. dated May 19, 1997 (the "**Sports Complex Master Plan**"). It shall include a description of the phasing plan for the Project and a proposed scope of work and schedule of performance, including all key milestones for design, development and construction to completion of the Project.

3.2.2 Infrastructure Plan. Developer shall prepare an "**Infrastructure Plan**" which shall set forth the existing infrastructure associated with the Project Site and shall describe improvements and engineering required to implement the proposed Development Concept. In preparation of the Infrastructure Plan, Developer shall analyze the existing infrastructure and prepare a detailed analysis of infrastructure requirements, including a circulation, traffic, transportation and parking plan, a phasing plan and a financing plan (including initial construction cost estimates) for development of required infrastructure. The Infrastructure Plan shall include analysis of the environmental and geotechnical condition of the Project Site and identification of environmental issues to be resolved and associated cost estimates.

3.2.3 Business Plan. Based upon the Development Plan and the Infrastructure Plan, Developer shall prepare a "**Business Plan**" that describes the financial and organizational characteristics of the Project in detail sufficient to support negotiation of the DDA (and, if applicable, a CAA). Specifically, the Business Plan will (i) include an organizational plan, a marketing program, a phasing and financing plan, a public benefit plan, a public financing plan, a feasibility analysis, a project schedule, a project pro forma in electronic spreadsheet format, (ii) include documentation and descriptions of all key cost and revenue assumptions and resulting financial returns, and any additional supporting narrative, (iii) include Developer's plan for financing the Project and related financial assurances, and (iv) provide an overview of how the Project will commence, function, achieve success, manage risk, raise capital and provide fiscal neutrality to Alameda (as described in Section 3.2.4.2), taking into account initial assessments of infrastructure cost and phasing, environmental issues, market analysis, economic modeling, financial modeling and other required technical studies. The Business Plan shall be consistent with Section 3.7.5 hereto. It is the intent of the Parties that negotiations of the Business Plan shall be contemporaneous with negotiations of the Development Concept.

3.2.4 Project Pro Forma. Alameda and Developer shall jointly prepare a pro forma for the Project (the "**Project Pro Forma**"). Alameda and its financial consultant shall control and maintain the Project Pro Forma, which shall be made readily available to Developer in electronic spreadsheet format. The Project Pro Forma shall reflect that except as described in Section 3.7.5 below, Alameda shall have no financial obligation associated with Developer's development on, or related to, the Project Site. The Project Pro Forma shall contain all financial considerations of the Project to be incorporated into the DDA, including a method for calculating the following elements:

3.2.4.1 IRR. The unleveraged internal rate of return ("**IRR**") to Developer for the Project, which IRR shall be based upon all appropriate costs (as defined in the Project Pro Forma), including personnel costs, incurred by Developer directly related to the Project and the Project Site, including pre-development expenditures and an agreed upon general

and administrative fee, to achieve an IRR to Developer of twenty percent (20%) to twenty-five percent (25%), provided, however, the precise IRR shall be subject to negotiation of the Parties as part of the DDA.

3.2.4.2 Fiscal Neutrality. Developer shall cooperate in implementing a municipal services district or other funding mechanism(s) (public or private) to ensure the Project is fiscally neutral with respect to the City General Fund. The funding mechanism is intended to (a) result in no negative impact to the City's General Fund, taking into consideration the reasonably anticipated revenues to the City's General Fund from the Project Site, and (b) avoid negative effects to the existing or future operations of the City. The model for the funding mechanisms provided in the Project Pro Forma shall provide for future fiscal neutrality and preserve the current fiscal neutrality with respect to the General Fund, which shall include funding for normal and customary municipal services, such as police and fire services.

3.2.5 Entitlement Plan. Developer shall develop an "**Entitlement Plan**" for the Project and the Project Site that shall include a list and provide a timeline for obtaining all land use entitlements and approvals it will seek from the City, including (a) a General Plan amendment, if required, (b) a master plan (the "**Master Plan**") pursuant to the MX zoning designation in the Alameda Municipal Code (the "**MX Zoning**") for the development of the Project Site, (c) a zoning amendment(s), (d) subdivision approval, (e) a development agreement (the "**Development Agreement**") prepared pursuant to California Government Code Section 65864 *et seq.*, vesting in Developer the right to develop the Project to the scope, uses, densities and intensities described in the Master Plan and other implementing regulatory documents and necessary to implement the Development Plan, (f) environmental review pursuant to CEQA, and if applicable, the National Environmental Policy Act ("**NEPA**"), (g) an agreement between Developer and Alameda to provide for expedited processing by the City of all land use entitlement applications including all environmental review required under CEQA and funding thereof by Developer (the "**Expedited Processing Agreement**"), and (h) such other entitlements and approvals as Developer may request for the Project Site. Developer shall use Best Efforts (as defined in Section 15.5 below) to implement and prosecute to completion the Entitlement Plan.

3.2.5.1 Project Master Schedule. As a component of the Entitlement Plan, the Developer shall prepare and maintain a project master schedule (the "**Project Master Schedule**") that sets forth, in reasonable detail, the expected tasks necessary to complete all of the Mandatory and Non-Mandatory Milestones, Entitlements, and at the Developer's discretion, subsequent approvals and the anticipated dates that these tasks are expected to be completed. The Developer shall submit the initial Project Master Schedule to the ARRA within thirty (30) business days from the Effective Date of this Agreement and shall update such schedule and deliver the updated schedule to the ARRA on a quarterly basis thereafter.

3.2.6 Entitlement Application. In order to meet the Mandatory Milestone for the Entitlement Application, Developer shall submit its application for the following items contemplated in the Entitlement Plan: (i) an initial draft of the Master Plan which shall include all applicable components required under MX Zoning; (ii) application for CEQA review; and (iii) an Expedited Processing Agreement (collectively, the "**Entitlement Application**"). Subsequent to submittal of the Entitlement Application, Developer shall use Best Efforts to

submit all required supplemental information sufficient for the Entitlement Application to be promptly determined to be complete by Alameda. Subsequent approvals will be necessary in order to develop the Project, which may include, without limitation, development plans; master demolition, infrastructure, grading and phasing plan; subdivision approvals; design review approvals; demolition permits; improvement agreements; infrastructure agreements; grading permits; building permits; site plans; sewer and water connection permits; and other similar requirements.

3.3 CAA. On Developer's request and using the information developed in the Plans, Alameda and Developer shall negotiate a CAA which will provide the framework for the proposed transaction and the terms of the DDA, including but not limited to, the terms by which ARRA shall acquire and convey the Property to Developer (the "**Property Transfer(s)**"). If a CAA is developed within the Exclusive Negotiation Period, it is the intent of the Parties that the CAA will set forth (i) a development program consistent with the Plans and the Project Pro Forma and (ii) the terms and conditions precedent to the Property Transfer(s) including, without limitation, approval of the CEQA Documents (as defined in Section 3.4 below) and the DDA by Alameda. Upon the request of Developer, Alameda shall take all necessary action to place the CAA on the agendas of each constituent of Alameda for a determination by each as to whether to approve the CAA and upon approval thereof, Developer and Alameda shall execute the CAA. The CAA shall also include provisions described in Section 3.6.6 below.

3.4 CEQA Documents. The Plans shall be of sufficient specificity to permit the subsequent preparation of the documents required for environmental review of the Project as required by CEQA (the "**CEQA Documents**"), including an environmental impact report or such other information and reports as may be required to permit Alameda to comply with the requirements of CEQA. Preparation of the CEQA Documents shall be a Non-Mandatory Milestone and shall commence following satisfaction of the Mandatory Milestone for the Entitlement Application. Execution of the DDA by the Parties and the closing of the Property Transfer(s) under the DDA shall be contingent upon certification of the CEQA Documents and adoption of the mitigation measures described therein.

3.5 Conditions to Property Transfer(s). The following shall be conditions precedent to the Property Transfer:

3.5.1 An amendment of the EDC MOA to permit a conveyance of the Property from the Navy to ARRA in accordance with the Finalized Navy Term Sheet (the "**EDC MOA Amendment**").

3.5.2 As required by the Finalized Navy Term Sheet, Developer shall provide evidence adequate to ARRA of Developer's ability to secure environmental insurance, including but not limited to a Cleanup Cost Cap policy and a Pollution Legal Liability policy (the "**PLL Policy**") or policies to the extent such are required to execute any necessary Early Transfer, provided that the PLL Policy shall not only be acceptable to the Navy, but shall also be acceptable to Alameda and shall name Alameda as additional insured(s), which acceptance by Alameda shall not be unreasonably withheld.

3.5.3 Environmental documents including financial assurance to regulators, early transfer package including a Finding of Suitability for Early Transfer (the "**FOSET**") and Covenant Deferral Request (the "**CDR**"), Environmental Services Cooperative Agreement (the "**ESCA**") or Early Transfer Cooperative Agreement (the "**ETCA**") or similar agreement, and consent orders among the environmental regulatory agencies and other State of California and federal officials to the extent such documents are necessary to facilitate conveyance of the Property pursuant to the schedule of performance to be included in the DDA.

3.5.4 A tidelands trust exchange agreement or similar agreement between the City and the California State Lands Commission to implement the exchange of lands into and out of the tidelands trust area (the "**Tidelands Trust Exchange Agreement**"), pursuant to California legislation adopted in 1999.

3.5.5 An amendment of that certain Memorandum of Agreement Among the United States Navy, the Advisory Council on Historic Preservation and the California State Historic Preservation Officer Regarding the Layaway, Caretaker Maintenance, Leasing and Disposal of Historic Properties on the Former Naval Air Station, Alameda, California, dated September 1, 1999 (the "**Section 106 Memorandum**").

3.5.6 A predator management agreement or similar agreement ("**Predator Management Agreement**") among Alameda, Developer and the U.S. Fish & Wildlife Service (the "**USFWS**") or other parties related to the effort to manage the predators of the California Least Tern pursuant to the Biological Opinion issued by the Navy on March 22, 1999 (the "**USFWS Biological Opinion**"), in furtherance of the Endangered Species Act.

3.5.7 Environmental review of the Project pursuant to CEQA, and if applicable, NEPA, and certification by the lead agency of the CEQA Documents (collectively, "Certification"), with all relevant appeal periods with respect to each such Certification having expired without the filing of a challenge or appeal, or if a challenge to or appeal of any Certification is filed, with such challenge or appeal resolved in a manner reasonably satisfactory to Developer that shall permit construction of the Project substantially as described in the DDA and the Entitlement Application filed with Alameda.

3.5.8 Approval by the City and, as applicable, the CIC, ARRA or any other relevant governmental agency, of the following zoning and entitlement applications and agreements for the Project ("**Approvals**"), with all relevant appeal periods with respect to each such Approval having expired without the filing of a challenge or appeal, or if a challenge to or appeal of any Approval is filed, with such challenge or appeal resolved in a manner reasonably satisfactory to Developer that shall permit construction of the Project substantially as described in the DDA and the Entitlement Application filed with Alameda:

3.5.8.1 The entitlements and approvals described in Section 3.2.5(a) through (g);

3.5.8.2 DDA (as described in Section 3.6 below);

3.5.8.3 APIP Community Improvement Plan amendment and Five-Year Implementation Plan amendment, if required;

3.5.8.4 Zoning map amendment;

3.5.8.5 Development Plan and Design Review, at Developer's sole discretion;

3.5.8.6 Parcel, Tentative or Vesting Tentative Maps, at Developer's sole discretion.

3.5.9 If applicable, revision of the USFWS Biological Opinion (the "**USFWS Biological Opinion Revision**").

3.5.10 If applicable, a biological opinion issued by the National Oceanic & Atmospheric Administration National Marine Fisheries Service (the "**NMFS Biological Opinion**").

3.6 DDA. The DDA will provide the mechanics and execution of the business terms, will define the legal and administrative mechanisms to implement the Property Transfer(s) and will establish the essential terms and framework of the Property Transfer(s), including specifying funding sources, Project phasing, the scope of development, terms of the Property Transfer(s), a schedule of performance, environmental clean-up responsibilities of Developer and the Navy, and specific obligations of Developer and Alameda in carrying out redevelopment of the Project Site. The DDA shall be consistent with the terms of the CAA if the Parties enter into a CAA, and shall include the following key terms and provisions:

3.6.1 Planning and Financial Terms. The DDA shall incorporate the provisions of the Development Plan, the Infrastructure Plan and the Business Plan and shall include all financial considerations for the Project, including those described in the Business Plan and Project Pro Forma, as updated and refined per CEQA (and if applicable, NEPA) review of the Project.

3.6.2 Transaction Documents. All applicable terms of the completed Transaction Documents, and provision for completion and incorporation of applicable terms of all Transaction Documents that are to be completed after execution of the DDA, and if applicable, prior to close of escrow pursuant to Section 2.2.1 above.

3.6.3 Environmental Remediation Liability. The DDA will provide for the liability of the Parties, if any, in respect of any environmental remediation on, or related to, the Project or Project Site.

3.6.4 Project Completion. Use of regulatory and financial mechanisms to achieve completion of the development of each phase of the Project in a prompt and reasonable manner, and remedies of Alameda for failure to complete. Such mechanisms shall include, but will not be limited to:

3.6.4.1 Provisions for the development of certain uses, phases, or sub-phases concurrently with other uses, phases, or sub-phases.

3.6.4.2 Provisions for the completion or partial completion of phases or sub-phases prior to the commencement of development of other phases or sub-phases.

3.6.4.3 Provisions for the timing and manner in which Developer shall provide drawings, elevations, models and other depictions of the design and construction details for development of the Project, and the timing and method for securing all required regulatory approvals.

3.6.4.4 A schedule of performance to be attached as an exhibit to the DDA, covering the Property Transfer(s) including leasing with respect to tidelands trust lands and assignment of existing leases (such as Buildings 22 and 40), permitting and development obligations and milestones. The DDA schedule of performance shall include obligations such as the filing of applications for tentative maps; the filing of final maps; the completion of, or bonding for, infrastructure; and post-conveyance infrastructure and vertical development obligations.

3.6.4.5 Extensions for performance due to force majeure or litigation challenging entitlements, subject to periods to be negotiated in the DDA.

3.6.4.6 Appropriate financial assurances, which may include performance and payment guarantees, to assure development of conveyed phases.

3.6.4.7 Terms providing for, and assuring the development of, all affordable housing by phases pursuant to the requirements of Community Redevelopment Law; the Housing Element of the General Plan, and that certain Settlement Agreement effective as of March 20, 2001 by and among the City, CIC, ARRA, the Housing Authority, Catellus Development Corporation, Renewed Hope Housing Advocates, and Arc Ecology. The affordable housing shall include, and Developer shall be entitled to a credit against its affordable housing obligation for, those certain 157 units of multi-family attached units that may be constructed by the Housing Authority of the City of Alameda (the "**Housing Authority**") on the Project Site on terms and conditions acceptable to Alameda, the Housing Authority and Developer which may include the following: (a) that the Housing Authority construct such units in "partnership" with Developer or a nonprofit or for-profit housing developer entity selected by the Housing Authority; (b) that the Housing Authority have an ownership interest in such housing; (c) approval by the Housing Authority of the development site(s) for such housing; (d) determination of the levels of affordability (it is the intention of the Parties that such housing shall first satisfy the very low and low income affordability requirements of the Project); (e) the site(s) be prepared for vertical development by Developer; and (f) the Housing Authority may receive a negotiated development fee.

3.6.4.8 Default and termination provisions (including reasonable cure periods), for failure to acquire portions of the Property, to apply for entitlements, or to develop the Project pursuant to the terms of the DDA and the DDA schedule of performance; which shall include rights of reverter in the CIC to conveyed land.

3.6.4.9 Requirements for the Developer to negotiate in good faith to enter into a project labor agreement for the construction trades.

3.6.5 Personal Property. Provisions for the disposition of personal property owned by Alameda located on, or related to, the Property.

3.6.6 Transfers. Provisions for Transfer (as defined in Section 9.2.4.5 below), which shall include (i) a mechanism for parties contributing debt or equity to the Project to remove Developer from day-to-day management of the entity that executes the DDA (the "**DDA Development Entity**") upon the occurrence of a default under the DDA Development Entity's operating or partnership agreement, provided that Developer is concurrently replaced with a substitute developer controlling day-to-day management that meets specified criteria as a "qualified developer", including the approval of Alameda, which approval will not be unreasonably withheld, conditioned or delayed, and (ii) the right of Developer to Transfer, on or after the date on which the DDA is signed, Ownership Interests (as defined below) in Developer so long as (A) SCC Acquisitions, LLC, a Delaware limited liability company ("**SCC Acquisitions, LLC**") or its wholly owned subsidiary shall continue to manage Developer on a day-to-day basis and have contributed to Developer at least five percent (5%) of the cash equity contributed and to be contributed by all of the parties holding Ownership Interests in Developer and (B) Alameda has determined that Developer has the financial ability, including debt and/or equity financing, to carry out its obligations under the DDA, which determination by Alameda shall not be unreasonably withheld, conditioned or delayed.

3.6.7 Leases. Provisions for addressing the leases described in Section 21 below.

3.7 Certain Overall Principles and Undertakings. The documents and actions contemplated in this Section 3 shall comply with the following general principles and be consistent with the following undertakings and agreements, all of which shall be applicable to the Project as a whole.

3.7.1 Dedication of Alameda Personnel; Response Time; Approvals.

3.7.1.1 Alameda and its constituent entities shall dedicate staff and other resources which are adequate at all times to perform the responsibilities of Alameda under this Agreement, and to the best of its ability, Alameda and its constituent entities shall assure that there is continuity of its staff throughout the life of the Project.

3.7.1.2 Subject to the Expedited Processing Agreement, Alameda shall use Best Efforts to respond to each submission of Developer required hereunder within a reasonable period from the date of submittal of the same. Alameda and its constituent entities shall keep Developer apprised of the anticipated timing of Alameda's response.

3.7.2 Project Infrastructure. The planning, construction, financing and payment for on and off-site Project infrastructure are obligations of Developer and not Alameda, except to the extent that public financing is provided by Alameda for the Project as described in Section 3.7.5 below.

3.7.3 Transportation. Developer shall, in the DDA, commit to (i) the implementation of transportation mitigation measures identified for the Project pursuant to the CEQA Documents, (ii) implementation of, or compliance with, conditions of approval pertaining

to transportation, and (iii) participation in transportation demand management and transportation systems management programs.

3.7.4 Compliance with CIC Requirements. Developer shall comply, or cause compliance, with all CIC requirements applicable to development of the Project, including, but not limited to: (i) the nondiscrimination and nonsegregation requirements of the APIP Community Improvement Plan for the APIP Project Area, and (ii) any requirements for training and employment opportunities to be extended to low-income residents of the Project Site, including requirements pursuant to those certain Standards of Reasonableness for Homeless Uses at Alameda Naval Air Station, as amended by that certain First Amendment to the Standards of Reasonableness, dated October 1999 (collectively, the "**Standards of Reasonableness**").

3.7.5 Tax Increment and Other Public Financing.

3.7.5.1 Tax Increment Financing. To the extent contemplated by the Project Pro Forma and committed to in the DDA, and subject to any conditions imposed thereon, including demonstrated need, priority of repayment of CIC's and ARRA's existing debt and operating expenses, priority of public benefit funding, the CIC shall make tax increment generated by the Project available to obtain public financing to fund project costs eligible under applicable law. The DDA or related documents, as applicable, shall determine the timing and phasing of development and order of priority of use of any tax increment committed to the Project by Alameda and such committed public funding shall be taken into account in the Project Pro Forma and the DDA pro forma.

3.7.5.2 Assessment Districts. Subject to the provisions of Section 3.7.5.1 above, the DDA shall contain provisions which allow Alameda, subject to exercise of its sole discretion, to make available additional public financing, including use of assessment districts and formation of a municipal services district and/or community facilities district. Developer shall cooperate in the formation of such assessment or taxing district.

3.7.5.3 Financial Protections. All public financing provided by Alameda shall be conditioned upon the inclusion of customary adequate protections for the CIC of its financial position and shall require rights of profit participation after Developer receives the IRR negotiated as part of the DDA as described in Section 3.2.4.1 above.

3.7.6 Alameda Power & Telecom. Developer understands that Alameda Power & Telecom ("**APT**") desires to market and provide telecommunications and other services to its telecommunication customers within the Project and is willing to negotiate in good faith with APT with respect to providing such services to the Project.

3.7.7 DDA and EDC MOA. The DDA shall comport with the EDC MOA as it may be amended.

3.7.8 Conditional Commitment to Terms, Terms not Exclusive. If the CIC and/or ARRA choose to approve and execute a DDA (and, if applicable, a CAA) with Developer for the Project Site, and Developer elects to execute the DDA (and, if applicable, a CAA), the Parties agree that such DDA (and, if applicable, a CAA) shall contain, implement, and shall be internally consistent with, the provisions referenced, described, or set forth in this Section 3,

subject to mutual written modification by the Parties. The provisions above are not intended as an exclusive list of the contents of a DDA (and, if applicable, a CAA), which is anticipated to be longer, more detailed, elaborated on, and go beyond, the above treatment of such issues.

3.8 Delivery of Documents and Reports.

3.8.1 Developer Documents. Developer shall provide to Alameda copies of all final reports, studies, analyses, cost estimates, material correspondence, and similar documents prepared or commissioned by Developer with respect to this Agreement, the Project and the Project Site, promptly upon their completion and following internal review by Developer, but excluding confidential or proprietary information which Alameda may not keep confidential pursuant to Section 10 below.

3.8.2 Alameda Documents. To the extent Alameda has not provided the following to Developer during the Due Diligence Period and to the extent the following are in Alameda's possession as of the Effective Date, promptly following the Effective Date, Alameda shall provide to Developer copies of all final reports, studies, analyses, cost estimates, material correspondence, and similar documents prepared or commissioned by Alameda with respect to this Agreement, the Project, the APIP Project (including tax increment financing analysis) and the Project Site. Thereafter, Alameda shall provide to Developer copies of all reports, studies, analyses, cost estimates, material correspondence, and similar documents prepared or commissioned by Alameda with respect to this Agreement, the Project, the APIP Project (including tax increment financing analysis) and the Project Site, promptly upon their completion and following internal review by Alameda and, if applicable, acceptance by the applicable governing bodies of Alameda, but excluding confidential privileged documents. Nothing in this Section 3.8.2 obligates Alameda to undertake any studies or analyses other than as required by CEQA.

3.8.3 Draft Documents. Notwithstanding anything to the contrary in Sections 3.8.1 and 3.8.2 above, the Parties acknowledge that it may be necessary to share with each other drafts reports, studies, analyses, cost estimates, material correspondence, and similar documents prepared or commissioned by Developer or Alameda with respect to this Agreement, the Project and the Project Site, provided such drafts are either not confidential or proprietary information of Developer which Alameda may not keep confidential pursuant to Section 10 below, or are confidential privileged documents of Alameda.

Section 4. Schedule and Milestones.

4.1 Schedules of Performance. The Non-Mandatory Milestone Schedule of Performance attached hereto as Exhibit B-2 sets forth the ~~initial estimated time periods for the~~ Non-Mandatory Milestones (as defined below) and initial estimated time periods for completion thereof. The Schedule of Performance (Mandatory Milestones) attached hereto as Exhibit B-1 (the "**Mandatory Milestone Schedule of Performance**") sets forth the Mandatory Milestones (as defined in Section 4.2 below) and dates for achieving the Mandatory Milestones. The Non-Mandatory Milestone Schedule of Performance and the Mandatory Milestone Schedule of Performance are sometimes referred to herein collectively as the "**Schedules of Performance**".

The Schedules of Performance may be amended by the Parties from time to time to reflect, among other things, extensions pursuant to Sections 4.2.1 or 5 below.

4.2 Mandatory Milestones. The mandatory milestones (the "**Mandatory Milestones**") shall be: (i) the submission of (a) the Project Master Schedule as described in Section 3.2.5.1, above, (b) the Development Concept as described in Section 3.2.1 above, (c) the Infrastructure Plan as described in Section 3.2.2 above, (d) the Business Plan as described in Section 3.2.3 above, and (e) the Entitlement Application as described in Section 3.2.6 above; and (ii) mutual agreement of the Parties on the Project Pro Forma as described in Section 3.2.4 above.

4.2.1 Mandatory Milestone Extension. The date for performance of any Mandatory Milestone may be extended by the Deputy Executive Director of the ARRA if there is a reasonable basis for such extension and so long as such extension does not exceed the Exclusive Negotiation Period, as the Exclusive Negotiation Period may be extended from time to time pursuant to Section 2.2 above.

4.2.2 Waiver of Project Pro Forma Mandatory Milestone. The failure of Developer and Alameda to agree upon the Project Pro Forma by the date for performance set forth therefor on the Mandatory Milestone Schedule of Performance shall be deemed a waiver by Alameda of the date for performance of that Mandatory Milestone.

4.3 Non-Mandatory Milestones. The non-mandatory milestones ("**Non-Mandatory Milestones**") shall be the completion of negotiations of the Transaction Documents listed in the Non-Mandatory Milestone Schedule of Performance attached hereto as Exhibit B-2. The dates for performance listed for the Non-Mandatory Milestones are good faith estimates by the Parties of the time required to complete the Transaction Documents. As used herein, completion of Transaction Documents means finalized and ready for approval by Alameda (by its Board of Directors, Board of Commissioners and City Council), or delivered or fully-executed, as applicable, with respect to any Transaction Document that does not require such approval by Alameda. The failure to complete such Non-Mandatory Milestones by the respective dates listed on the Non-Mandatory Milestone Schedule of Performance for any reason whatsoever shall not in and of itself constitute a default by either Party hereunder.

Section 5. Litigation Force Majeure. The Exclusive Negotiation Period, and the dates for performance of Mandatory Milestones, shall be extended for the period of any Litigation Force Majeure (as defined below); provided that any extension as a consequence of Litigation Force Majeure shall operate to extend the date for achievement of any Mandatory Milestone only to the extent that the Mandatory Milestone is affected by the event or events constituting the Litigation Force Majeure. The Parties may elect to amend this Agreement to reflect extensions pursuant to this Section 5, and such amendments shall reflect which Mandatory Milestones and Transaction Documents (and related Non-Mandatory Milestones) are so affected.

5.1 "**Litigation Force Majeure**" means any action, proceeding, application or request before any court, tribunal, or other judicial, adjudicative or legislative decision-making body, including any administrative appeal, that is brought by a third party and seeks to challenge: (a) the validity of any action taken by Alameda with respect to a Transaction Document(s),

including Alameda's selection of Developer as the developer of the Project Site, the approval by Alameda of any of the proposed Transaction Documents, the performance of any action required or permitted to be performed by Alameda hereunder or under the proposed Transaction Documents, or any findings upon which any of the foregoing are predicated; or (b) the validity of any other approval that is required for the conveyance, management or redevelopment of the Project Site as contemplated hereby and would prevent the Parties from executing the DDA with conditions, as provided above, or prevent the DDA from becoming effective, or require a material modification of the DDA, the Plans, the Entitlement Application or the Project.

Section 6. Alameda Cost Recovery/Reimbursement.

6.1 Initial Payments. Alameda acknowledges receipt of One Hundred Thousand Dollars ($100,000) paid by SCC Acquisitions (the rights to which have been assigned by SCC Acquisitions to Developer) to ARRA as required by the Developer MOA. Within five (5) business days after approval of, and execution by, Alameda and Developer of this Agreement (the "**Approval Date**"), Developer shall pay to Alameda an additional Nine Hundred Thousand Dollars ($900,000), for a total One Million Dollars ($1,000,000) sum (the "**Initial Payment**") that shall be placed in an interest bearing account and the Initial Payment (without interest) shall be applied to the land purchase price if the Project Site is conveyed to Developer.

6.2 Developer Reimbursement of Alameda Pre-Development Costs. Developer shall reimburse Alameda for its pre-development costs, which shall consist of third-party consultant and legal costs and expenses and Alameda staff time, as such staff time shall be reflected in the Annual Budget (as defined below), related to the negotiation and preparation of this Agreement and the Transaction Documents (the "**Pre-Development Work**"), incurred from and after the Effective Date (the "**Pre-Development Costs**"), subject to the provisions of this Section 6. With the exception of the Assistant City Manager, Base Reuse Division Manager, and Manager, Planning, which shall be billed at the percentage of such position's salary and benefits shown on Exhibit C, all employees and consultants of Alameda shall bill on an hourly basis.

6.3 Initial Deposit; Annual Budget; Negotiating Costs Account Ledger. An estimate of Alameda's annual projected Pre-Development Costs for the period commencing with the Effective Date and terminating twelve (12) months later is attached as Exhibit C to this Agreement (the initial "**Annual Budget**"). The Annual Budget shall be evaluated and reasonably adjusted each year. Alameda shall use good faith efforts not to exceed the Annual Budget agreed to by the Parties from time to time. Within ten (10) days after the Effective Date, Developer shall submit a cash deposit to Alameda in an amount equal to twenty-five percent (25%) of the Annual Budget (the "**Initial Deposit**"). The Initial Deposit shall be sequestered in a separate account (the "**Negotiating Costs Account**"). Interest earned on funds in the Negotiating Costs Account shall accrue to that account. All invoices and charges for Pre-Development Costs made against that account during the first ninety (90) days of negotiation shall be recorded on a separate ledger (the "**Negotiating Costs Account Ledger**"). If Alameda's actual Pre-Development Costs for such ninety (90) day period exceed the Initial Deposit, Alameda shall fund such costs from its own sources, but shall record a notice of deficit in the Negotiating Costs Account Ledger.

6.3.1 Mechanism for Funding Ongoing Alameda Cost Recovery.

6.3.1.1 On the ninetieth (90th) day following the Approval Date, Developer shall deposit additional funds into the Negotiating Costs Account equal to twenty-five percent (25%) of the Annual Budget plus any deficit accrued in the Negotiating Costs Account Ledger (each a "**Quarterly Deposit**"). Alameda and Developer shall continue this process for each ninety (90) day negotiating period until this Agreement is terminated; provided, however, that in any twelve (12) month period, Developer shall not be responsible for reimbursement of Pre-Development Costs in excess of the Annual Budget as attached hereto or as revised as provided below.

6.3.1.2 If a deficit or a surplus of greater than ten percent (10%) of the pro-rated Annual Budget has accrued in the Negotiating Costs Account Ledger for three (3) successive quarters, or for three (3) quarters in any calendar year, Developer and Alameda shall meet and confer in good faith to assess the sufficiency of the Annual Budget amount, and may upon the written consent of each, adjust the Annual Budget accordingly, provided, however, if Alameda determines that an increase in the Annual Budget is necessary and Developer does not agree, then Alameda shall have no obligation to perform, or cause to be performed, any Pre-Development Work for which such increased amount is necessary, pending resolution of the dispute. Thereafter, Quarterly Deposits shall consist of twenty-five percent (25%) of the Annual Budget as revised, plus any deficit accrued in the Negotiating Costs Account Ledger.

6.3.1.3 Upon termination of this Agreement any surplus funds in the Negotiating Costs Account remaining after (a) the completion of the ninety (90) day negotiating period during which this Agreement was terminated, and (b) payment of Pre-Development Costs incurred by Alameda during such ninety (90) day negotiating period, shall be returned to Developer. If there is a deficit noted in the Negotiating Costs Account Ledger at the conclusion of the ninety (90) day negotiating period during which this Agreement terminated, then such amount shall be due and payable by Developer. Any extension of this Agreement as provided herein shall extend the cost recovery procedures set forth in this Section 6.3.1. This Section 6.3.1.3 shall survive the expiration or termination of this Agreement.

6.3.1.4 Review of Negotiating Costs Account Ledger. From time to time, upon reasonable prior notice to Alameda, Developer may review the Negotiating Costs Account Ledger to determine whether invoices and charges to the Negotiating Costs Account reflect actual Pre-Development Costs. If Developer disputes any invoice or charge to the Negotiating Costs Account, Developer shall notify Alameda, and if the Parties so agree that an invoice or charge has been inappropriately charged against the account, Alameda shall deduct the amount of the inappropriate invoice(s) or charge(s) from the sum it is entitled to draw from the Negotiating Costs Account for the next ninety (90) day negotiating period, or if after the termination of this Agreement, a disputed invoice or charge is identified and the Parties agree that such invoice or charge was inappropriately charged, Alameda shall promptly pay such amount of Developer.

Section 7. Events of Default.

7.1 Default of Developer. Upon the occurrence of any of the events described in this Section 7.1 and, if applicable, the failure of Developer to cure such event within the respective cure period (as expressly provided in this Section 7.1), there shall be a "**Developer Event of Default**", provided if a cure period is expressly set forth in this Section 7.1, Alameda shall have first given written notice of the default (the "**Alameda Default Notice**") specifying in reasonable detail the basis for the determination of the default. If no cure period is expressly provided in this Section 7.1 (e.g., Section 7.1.4), Alameda may provide a written notice of default with a termination notice pursuant to Section 8.1 below.

7.1.1 Failure of Developer to Negotiate in Good Faith. In the event that Alameda determines in its reasonable discretion that Developer has failed to negotiate diligently and in good faith as provided in Section 1.1 above, Alameda shall have the right to give an Alameda Default Notice to Developer in accordance with Section 7.1 above. Following the receipt of such notice, Developer shall have thirty (30) business days to cure the default identified in the Alameda Default Notice by re-commencing to negotiate in good faith or by notifying Alameda that it does not consider its action or inaction a failure to negotiate diligently and in good faith. If Developer fails to cure the default within such cure period, Alameda shall have the right to terminate this Agreement by written notice to Developer; provided that Developer shall have the right to dispute such termination.

7.1.2 Failure of Developer to Make Requested Deposits into the Negotiating Costs Account. In the event Developer fails to make the Initial Deposit or any Quarterly Deposit pursuant to the procedure set forth in Section 6 of this Agreement, Alameda shall have the right to give written notice thereof to Developer specifying the amount of the deposit which was not made. Following the receipt of such notice, Developer shall have fifteen (15) business days to make the required deposit and Alameda shall have the right to suspend all Pre-Development Work being performed by third parties paid by Alameda during such cure period. If Developer has not then made the required deposit, Alameda shall have the right to terminate this Agreement by written notice to Developer.

7.1.3 Breach by Developer of Section 9.2 of this Agreement. If Developer makes any Transfer (as defined in Section 9.2.4.5 below) in violation of Section 9.2 below, Alameda shall have the right to give an Alameda Default Notice in accordance with Section 7.1 above to Developer. If Developer fails to cure the default within forty-five (45) business days of having received such notice, Alameda shall have the right to terminate this Agreement by written notice to Developer.

7.1.4 Voluntary Bankruptcy or Insolvency. In the event that Developer becomes insolvent and/or files a voluntary petition in bankruptcy, Alameda shall have the right to terminate this Agreement by written notice to Developer.

7.1.5 Involuntary Bankruptcy. In the event that an involuntary petition in bankruptcy has been filed against Developer (an "**Involuntary Bankruptcy**"), Developer shall promptly notify Alameda and shall have one hundred twenty (120) days from the filing of such Involuntary Bankruptcy to cause the same to be dismissed. If Developer fails to cause dismissal

within such one hundred twenty (120) day period, Alameda shall have the right to terminate this Agreement by written notice to Developer.

7.1.6 Failure to Achieve a Mandatory Milestone. Subject to Sections 4.2.1 and 4.2.2 above, in the event Developer fails to achieve a Mandatory Milestone by the applicable date set forth in the Mandatory Milestone Schedule of Performance, as such date may be extended pursuant to Section 4.2.1 above, Alameda shall have the right to give an Alameda Default Notice in accordance with Section 7.1 above to Developer. If Developer fails to cure the default within forty-five (45) business days of having received such notice, Alameda shall have the right to terminate this Agreement by written notice to Developer.

7.2 Default of Alameda. In the event that Developer determines in its reasonable discretion that Alameda has failed to negotiate diligently and in good faith as provided in Section 1.1 above, Developer shall have the right to give written notice (the "**Developer Default Notice**") thereof to Alameda specifying in reasonable detail the grounds for such failure. Following the receipt of such notice, Alameda shall have thirty (30) business days to cure the default identified in the Developer Default Notice by re-commencing to negotiate in good faith or by notifying Developer that it does not consider its action or inaction a failure to negotiate diligently and in good faith. If Alameda fails to cure the default within the applicable cure period (an "**Alameda Event of Default**"), Developer shall have the right to terminate this Agreement by written notice to Alameda, provided that Alameda shall have the right to dispute such termination.

7.3 Failure to Agree Upon Transaction Documents. Notwithstanding anything to the contrary in this Agreement, provided that each Party has complied with the provisions of this Agreement, the failure to reach agreement upon any of the Transaction Documents or complete any of the identified tasks set forth in Section 3 above shall not be deemed either an Alameda Event of Default or Developer Event of Default. If the Term of this Agreement expires prior to reaching agreement pursuant to this Section 7.3, Developer shall not be entitled to the return of the Initial Payment or any interest accrued thereon.

7.4 Remedies. In any action at law or equity or other legal or administrative proceeding to remedy a Developer Event of Default or an Alameda Event of Default or otherwise enforce this Agreement, or that otherwise may arise out of this Agreement neither Alameda nor Developer shall be entitled to damages or monetary relief other than as set forth in this Section 7.4. Permitted remedies shall include (i) mandatory or injunctive relief, (ii) writ of mandate, (iii) termination of this Agreement, or (iv) a contract Claim (as defined Section 15.5 below) to recover money due to Alameda or Developer as a payment of Pre-Development Costs or reimbursement of excess Pre-Development Cost deposits under Section 6 of this Agreement; provided, however, neither Alameda nor Developer shall be liable, regardless of whether the Claim is based in contract or tort, for any special, indirect or consequential damages.

Section 8. Termination.

8.1 Termination by Notice. Upon the occurrence of any of the circumstances contained in this Section 8.1, this Agreement may be terminated by the applicable Party by

written notice to the other. If this Agreement is terminated pursuant to this Section 8.1, Developer shall not be entitled to a refund of the Initial Payment or any interest accrued thereon.

8.1.1 A Developer Event of Default pursuant to Section 7.1 above, provided that an Alameda Default Notice has been sent and any period of a right to cure has passed without such cure occurring.

8.1.2 Developer, in its sole discretion, may terminate this Agreement at any time upon provision of fifteen (15) business days prior written notice to Alameda in the event that during the course of its investigations and evaluation of the Project Site and the Project, Developer determines in good faith that the Project is not commercially feasible or capable of being financed in a commercially reasonable manner.

8.1.3 Developer elects, in writing, not to commence reimbursement of Pre-Development Costs as provided in Section 6.3 above.

8.2 Termination by Alameda Default. In the event of an Alameda Event of Default pursuant to Section 7.2 above, Developer may terminate this Agreement by delivery of written notice to Alameda, provided that a Developer Default Notice has been sent and any period of a right to cure has passed without such cure occurring. If this Agreement is terminated pursuant to this Section 8.2, Developer shall be entitled to a refund of the Initial Payment, together with any interest accrued thereon. Such refund obligation shall survive the expiration or termination of this Agreement.

8.3 Termination by Expiration. This Agreement will automatically terminate upon expiration of the Exclusive Negotiation Period, as it may be extended pursuant to Section 2.2 above. If this Agreement terminates pursuant to this Section 8.3, then, absent an Alameda Event of Default, Developer shall not be entitled to a refund of the Initial Payment or any interest accrued thereon.

8.4 Negotiating Costs Account Refund. If this Agreement terminates pursuant to this Section 8, Alameda shall return to Developer any funds remaining in the Negotiating Costs Account after all applicable payments have been made from the Negotiating Costs Account for the period to and including the termination date. This Section 8.4 shall survive the termination of this Agreement.

Section 9. Representations and Warranties; Transfers.

9.1 Representations and Warranties.

9.1.1 Duly Formed and Validly Existing. Developer represents and warrants that SCC Alameda Point LLC is a Delaware limited liability company duly formed and validly existing under the laws of the State of Delaware and is admitted and in good standing (as a foreign limited liability company) in the State of California.

9.1.2 Developer Authority. Developer represents and warrants that the person(s) executing this Agreement on behalf of Developer has full right, power and authority to execute this Agreement and to bind Developer hereunder.

9.1.3 Alameda Authority. Alameda represents and warrants that the persons executing this Agreement on behalf of Alameda have the full right, power and authority to execute this Agreement and to bind Alameda hereunder.

9.2 Transfer of this Agreement.

9.2.1 Purpose of Restrictions on Transfer. The qualifications and identity of Developer are of particular concern to Alameda, in view of the importance of the entitlement and development of the Project and the Project Site to Alameda. It is because of the qualifications and identity of Developer that Alameda is entering into this Agreement with Developer. Accordingly, a Transfer (as defined below) of this Agreement is permitted only as provided in Sections 9.2.2 and 9.2.3 below.

9.2.2 Transfers Prohibited; Alameda Consent. Except as permitted in Section 9.2.3 below, Developer shall not make or create any Transfer of its interest in this Agreement or any part thereof, nor shall any Person having an Ownership Interest in Developer Transfer any such Ownership Interest without the prior written consent of Alameda, which consent may be given in the sole discretion of Alameda. Any consent or approval of Alameda pursuant to this Section 9.2 shall be as authorized by its Board of Directors, Board of Commissioners and City Council. In the absence of express written approval by Alameda, no Transfer shall relieve Developer or any other party from any obligations pursuant to this Agreement.

9.2.3 Permitted Transfer.

9.2.3.1 Developer shall have the right to Transfer its interest in this Agreement without Alameda's consent to any Controlled Affiliate (as defined below) so long as SCC Acquisitions, LLC shall be Controlled (as defined below) by Bruce Elieff and/or Steve Elieff.

9.2.3.2 Ownership Interests in Developer may be Transferred without Alameda's consent provided that after any such Transfer (i) SCC Acquisitions, LLC shall be Controlled (as defined below) by Bruce Elieff and/or Steve Elieff and (ii) SCC Acquisitions, LLC or its wholly owned subsidiary (a) shall have contributed at least fifteen percent (15%) of the cash equity contributed by all of the owners of Developer, (b) is responsible for the day-to-day management of Developer, and (c) during the Exclusive Negotiation Period there exists no right of the other parties holding Ownership Interests of Developer or any other party to remove SCC Acquisitions, LLC or its wholly owned subsidiary from the day-to-day management of Developer without the prior written consent of Alameda, which consent will not be unreasonably withheld (and the lack of a replacement acceptable to Alameda shall be deemed reasonable grounds).

9.2.4 Definitions. For purposes of this Agreement, the capitalized terms defined in this Section 9.2.4 shall have the meanings ascribed to them below:

9.2.4.1 "**Control**" or "**Controlled by**" or "**Controlling**" or any derivative thereof, when used with respect to any specified Person, means the possession, directly or indirectly, of fifty-one percent (51%) or more of the Ownership Interests of such Person.

9.2.4.2 "**Controlled Affiliate**" shall mean a Person in which Developer has contributed at least fifteen percent (15%) of the cash equity contributed by all of the owners of such Person; provided that (a) Developer is responsible for the day- to-day management of such Person, and (b) during the Exclusive Negotiation Period there exists no right of the other parties holding Ownership Interests of such Person or any other party to remove Developer from the day-to-day management of such Person without the prior written consent of Alameda, which consent will not be unreasonably withheld, conditioned or delayed (and the lack of a replacement acceptable to Alameda shall be deemed reasonable grounds).

9.2.4.3 "**Ownership Interest**" shall mean the possession, directly or indirectly, of voting securities or partnership, general partnership, membership or other ownership interests (based upon value or vote) of a Person.

9.2.4.4 "**Person**" shall mean any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, or any other entity or association.

9.2.4.5 "**Transfer**" shall mean any voluntary or involuntary transfer, sale, assignment, pledge, hypothecation or the like to any Person, including any transfer, sale, assignment, pledge or hypothecation of Ownership Interests in Developer.

9.2.5 Compliance. Alameda shall have the right, but not the obligation, from time to time ~~to require~~, by written notice to Developer, to require that Developer demonstrate compliance with the requirements of this Section 9.2; provided, however, Alameda may not require such ~~certification~~demonstration more than once every six (6) months. Developer shall provide to Alameda within five (5) business days of receipt of such ~~request~~notice, all ~~necessary and sufficient~~ documentation reasonably necessary in order to enable Alameda to determine whether Developer is in compliance with the requirements of this Section 9.2.

9.3 Individuals on Development Team. Developer shall endeavor to retain the key individuals assigned by it to perform the responsibilities identified herein and in the event of changes in such personnel, individuals of substantially equivalent seniority, experience and qualifications shall be assigned. Developer shall provide written notice to Alameda of changes in its key personnel and their respective responsibilities and shall furnish to Alameda information on the seniority, experience and qualifications of any additional or substituted individuals.

Section 10. Confidentiality of Information and Negotiations. Alameda and Developer enter this Agreement with the understanding that Developer may provide certain information of a confidential nature during the negotiations of the Transaction Documents and other tasks identified in Section 3 above. Such information may be necessary for Alameda to verify information that is relevant to the negotiations of the Transaction Documentation. Alameda and Developer agree that they will keep confidential and not disclose any information submitted by Developer in the course of the negotiations or preliminary drafts of Transaction Documents or other negotiation preliminary draft documents, including financial analyses, that are identified as privileged or confidential under the law unless ordered to do so by a final order of court. Developer agrees to bear all costs of any litigation that is filed to determine the applicability of public records law to information and documents submitted by Developer in furtherance of

negotiating a DDA or any other agreements contemplated in the Agreement. Notwithstanding the provisions of this Section 10, in no event shall any party be required to disclose to any other party information which is protected by the attorney-client privilege.

Section 11. Representatives of the Parties.

11.1 Alameda Representative. For the purpose of administering the provisions of this Agreement, Alameda shall be represented by the Deputy Executive Director of the ARRA, or such other Alameda staff as shall be designated from time to time to act for a particular matter in writing.

11.2 Developer Representative. For the purpose of administering the provisions of this Agreement, Developer shall be represented by Bill Myers, or such other employees of Developer as are designated from time to time to act for a particular matter in writing by Developer. In addition, Developer shall assign personnel to assist in the negotiations and the completion of the tasks set forth in Section 3 above.

Section 12. Limitations of this Agreement.

12.1 By executing this Agreement, Alameda is not committing itself to, or agreeing to undertake any: (i) exchange or transfer of land, (ii) disposition of land to Developer, or (iii) other acts or activities requiring the subsequent independent exercise of discretion by ARRA, the CIC, the City or any agency or department thereof. This Agreement does not constitute a disposition or exchange of property by ARRA, the City or the CIC. Execution of this Agreement by Alameda is merely an agreement to enter into a period of exclusive negotiations according to the terms thereof, reserving final discretion and approval by the Board of Directors of ARRA, Board of Commissioners of the CIC and the City Council as to a DDA or any other agreement(s) contemplated in this Agreement and all proceedings and decisions in connection therewith.

12.2 If a DDA has not been executed by the Parties by the expiration of the Exclusive Negotiation Period (as extended pursuant to Section 2.2 above) or if this Agreement has otherwise been terminated in accordance with the provisions set forth herein, neither Party shall have any further rights or obligations under this Agreement, except with respect to any obligation which expressly survives the termination or expiration of this Agreement as set forth in Sections 6, 8 and 18 of this Agreement.

Section 13. Approval of DDA. If negotiations culminate in a DDA between Alameda and Developer following CEQA review of the Project, such DDA shall become effective only after and upon the approval by the Board of Directors of ARRA (if applicable), Board of Commissioners of the CIC and the City Council and execution by Alameda pursuant to direction of the Board of Directors of ARRA (if applicable), Board of Commissioners of the CIC and the City Council.

Section 14. Alameda Right to Obtain Information and to Consult with Others. Alameda reserves the right to obtain information concerning the transaction described by this Agreement from any person, entity or group; provided, however, that excepting consultants retained by Alameda to assist in the negotiation process contemplated in this Agreement, Alameda shall not

reveal to any such persons or groups confidential or proprietary information or other information kept confidential as provided in Section 10 of this Agreement.

Section 15. Nonliability of ARRA, the CIC and the City. Subject to Alameda's compliance with the provisions of this Agreement:

15.1 Developer Warrants it Has No Claims Against the ARRA, the CIC or the City. Developer agrees that it does not now have and shall not at any time, whether before or after its execution of this Agreement, have or make any Claim or Claims against Alameda, individually or collectively, or against ARRA, the CIC or City, or the ARRA Property, CIC Property, or City Property (all as hereinafter defined), directly or indirectly, by reason of any or all of the causes set forth in Section 15.3 below.

15.2 Nonliability of the ARRA, the CIC and the City of Alameda. Developer agrees that Alameda shall not have any liability whatsoever of any kind or character, directly or indirectly, by reason of any or all of the causes set forth in Section 15.3 below.

15.3 Causes to which Nonliability Apply. The causes to which the provisions of Sections 15.1 and 15.2 above apply are as follows:

15.3.1 Any aspect of the RFQ, including any information or material set forth therein or referred to therein;

15.3.2 Any aspect of the Developer MOA, including any information or material set forth therein or referred to therein;

15.3.3 Any modification, or suspension of the RFQ or Developer MOA, or informalities or defects therein;

15.3.4 Any defects in the selection procedure identifying Developer conducted by Alameda or any act or omission of Alameda with respect thereto, or any release or dissemination of any information submitted by Developer to Alameda prior to the Effective Date;

15.3.5 The expiration of the Exclusive Negotiation Period, whether initial or an extension thereof; or

15.3.6 The exercise of any ARRA, CIC or City discretion, decision and judgment permitted by this Agreement.

15.4 Waiver of Claims. Developer expressly and absolutely waives any and all Claim or Claims against the ARRA, the CIC, the City of Alameda, ARRA Property, CIC Property or City Property, directly or indirectly, arising out of, or in any way connected with, any or all of the matters set forth in Section 15.3 above.

15.5 Definitions. For purposes of this Agreement, the words defined in this Section 15.5 shall have the meanings ascribed to them herein:

15.5.1 "**ARRA**", "**CIC**", and "**City**" includes their respective members, officers, employees, agents, consultants, successors, and assigns.

15.5.2 "**ARRA Property**", "**CIC Property**" and "**City Property**" shall include the Project Site and all other property of ARRA, the CIC and the City, real, personal or of any other kind or character.

15.5.3 "**Best Efforts**" shall mean the commercially reasonable expenditure of time and effort on the part of the representatives of the Parties to accomplish a specified task, but shall not mean the expenditure of funds by ARRA, the City or the CIC which are not recoverable under the cost recovery mechanism set forth in Section 6 above, nor shall "Best Efforts" require either Party to incur liabilities unless such act is otherwise explicitly required by this Agreement or by State of California or federal law.

15.5.4 "**Claim**" or "**Claims**" shall mean any and all protests, rights, remedies, interests, objections, claims, demands, actions or causes of action of every kind or character whatsoever, in law or in equity, for money or otherwise, including but no limited to Claims for injury, loss, expense or damage, Claims to property, real or personal, or rights or interest therein, and Claims to contract or development rights or development interests of any kind or character, in any ARRA Property, CIC Property and/or City Property, or Claims that might be asserted against or cloud title to ARRA Property, CIC Property or City Property.

Section 16. Hold Harmless and Indemnity; Limitation on Liability.

16.1 Indemnity. Developer shall defend, hold harmless and indemnify ARRA, the CIC and the City from and against any and all Claims made by any third party directly or indirectly arising out of Developer's Response to the RFQ and/or the Alameda Point MOA; provided, however, such obligation shall not apply to any claim resulting solely from an act or omission of ARRA, the CIC and/or the City.

16.2 Limitation on Liability. No member, official or employee of Alameda shall be personally liable to Developer in the event of any default or breach by Alameda, or for any amount which may become due to Developer, or on any obligations under the terms of this Agreement. No member, officer or employee of Developer or its affiliates shall be personally liable to Alameda in the event of any default or breach by Developer, or for any amount which may become due to Alameda, or on any obligations under the terms of this Agreement.

Section 17. Notices. Formal notices, demands and communications between the Parties shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by an express delivery or overnight courier service that maintains written delivery records, to the office of the Parties shown as follows, or such other address as the Parties may designate in writing from time to time:

If to Alameda:

ARRA: Alameda Reuse and Redevelopment Authority
950 West Mall Square
Alameda, California 94501
Attention: Alameda Point Project Manager

CIC: Community Improvement Commission of the City of Alameda
950 West Mall Square
Alameda, California 94501
Attention: Development Services Director

City: City of Alameda
2263 Santa Clara Avenue
Alameda, California 94501
Attention: City Manager

With copies to City of Alameda
2263 Santa Clara Avenue, Room 280
Alameda, California 94501
Attention: City Attorney

If to Developer: SCC Alameda Point LLC
c/o SunCal Companies
1430 Blue Oaks Boulevard, Suite 200
Roseville, California 95747
Attention: Bill Myers

SCC Alameda Point LLC
c/o SunCal Companies
2392 Morse Ave
Irvine, California 92614
Attention: Marc Magstadt

SCC Alameda Point LLC
c/o SunCal Companies
2392 Morse Ave
Irvine, California 92614
Attention: Bruce Cook

Such written notices, demands, and communications shall be effective on the date shown on the written delivery record as the date delivered or the date on which delivery was refused. Notwithstanding the foregoing, Alameda may respond to Developer requests for information by delivering requested information to only the address of the requesting representative of Developer.

Section 18. Entry On Property. During the Term of this Agreement, ARRA shall provide Developer with reasonable access to and entry upon the Project Site, during normal business hours and in accordance with the terms and conditions of this Section 18, for the purposes of conducting such non-intrusive inspections and studies as Developer may elect of the physical condition of the Project Site. Such access, inspections and studies shall be permitted and conducted on the following terms and conditions:

18.1 Developer shall pay for all inspections and studies ordered by Developer.

18.2 Developer shall maintain, and ensure that its contractors maintain, the following insurance:

18.2.1 Developer shall maintain commercial general liability and property damage insurance, contractual liability and worker's compensation insurance as follows:

18.2.1.1 Broad form commercial general liability insurance, in an amount not less than Five Million Dollars ($5,000,000), combined single limit.

18.2.1.2 Workers' compensation, statutory coverage as required by the State of California, and employer's liability in an amount not less than One Million Dollars ($1,000,000).

18.2.1.3 Automobile liability insurance for owned, hired or non-owned vehicles, in an amount not less than One Million Dollars ($1,000,000), combined single limit.

18.2.2 All insurance provided for under this Agreement shall be effected under valid enforceable policies issued by insurers of recognized responsibility having a rating of at least A-VIII in the most current edition of A.M. Best's Insurance Reports, or otherwise acceptable to ARRA' Risk Manager.

18.2.3 All liability policies required hereunder shall be written on an occurrence basis. The required coverage may be provided by a blanket, multi-location policy.

18.2.4 Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are to be included in such general annual aggregate limit, such general aggregates limit shall double the occurrence or claims limits specified.

18.2.5 Commercial general liability and automobile liability insurance policies shall be endorsed or otherwise provide the following:

18.2.5.1 Name the Alameda Reuse and Redevelopment Authority (ARRA), the Community Improvement Commission of the City of Alameda (CIC), and the City of Alameda (City) and their councils, commissions, boards, departments, officers, agents, employees and volunteers, as additional insureds, using ISO Additional Insured Endorsement Form CG2026 (or a substitute providing equivalent coverage) or as may be mutually agreed.

18.2.5.2 All policies shall be endorsed to provide thirty (30) days' advance written notice to ARRA' Risk Manager of cancellation, except in the case of cancellation for nonpayment of premium, in which case cancellation shall not take effect until ten (10) days prior written notice has been given. Developer covenants and agrees to give ARRA reasonable notice in the event that it learns or has any reason to believe that any such policy may be canceled or that the coverage of any such policy may be materially reduced.

18.2.6 All insurance provided under this Agreement shall be primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought. All policies shall include provisions denying such respective insurer the right of subrogation and recovery against ARRA. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

18.2.7 Developer shall deliver to ARRA certificates of insurance and Additional Insured Endorsements in form reasonably satisfactory to ARRA, evidencing the coverages required hereunder ("**Evidence of Insurance**"), on or before the Effective Date of this Agreement, and Developer shall provide ARRA with Evidence of Insurance thereafter before the expiration dates of expiring policies. In addition, Developer shall deliver to ARRA complete copies of the relevant policies upon request therefor from ARRA.

18.2.8 Notwithstanding anything to the contrary in this Agreement, Developer's compliance with this Section 18.2 shall in no way relieve or decrease liability of Developer under Section 18.6 below, or any other provision of this Agreement, and no insurance carried by Alameda shall be called upon to satisfy Developer's indemnification obligations under Section 18.6 below or any other obligations of Developer or its employees, agents, consultants, and contractors under this Agreement.

18.3 Developer hereby waives any and all rights of recovery against Alameda and its employees for any loss or damage to the extent these damages are insured by insurance carried by Developer, and the insurance proceeds are actually received by the insured, including amounts within any insurance deductible or self-insured retention. Developer shall, upon obtaining policies of insurance required in this Agreement, give notice to the insurance carrier or carriers that the foregoing waiver of subrogation is contained in this Agreement.

18.4 Developer will take all steps necessary to ensure that any conditions on the Project Site created by Developer's entry will not interfere with the normal operation of the Project Site or create any dangerous, unhealthy, unsightly or noisy conditions on the Project Site.

18.5 In connection with any and all entry by Developer or its employees, agents, consultants, and contractors on the Project Site, Developer shall keep the Project Site free of all liens by mechanics, materialmen, laborers, architects, engineers, and any other persons or firms engaged by Developer to perform any work in connection with the Project Site.

18.6 Developer shall indemnify and hold Alameda harmless from and against any costs, damages, liabilities, losses, expenses, liens or claims (including, without limitation, reasonable attorneys' fees) arising out of or relating to any entry on the Project Site by Developer, its agents, employees, consultants or contractors in the course of performing the inspections or studies provided for in this Agreement, or to any conditions on the Project Site created by Developer's entry. The foregoing indemnity shall survive the expiration or termination of this Agreement.

18.7 Developer's activities on the Project Site shall be subject to the general supervision and inspection of Alameda and to such rules and regulations regarding ingress, egress, safety, sanitation and security as may be reasonably prescribed by Alameda from time to time.

Section 19. Cooperation. In connection with this Agreement, the Parties shall reasonably cooperate with one another to achieve the objectives and purposes of this Agreement, including cooperating with each other in preparing and negotiating the Transaction Documents with third parties identified in Section 3 above. In so doing, the Parties shall each refrain from doing anything that would render its performance under this Agreement impossible.

Section 20. Governmental Contact. Developer agrees that it will not meet, or engage in negotiations, with any governmental officials or staff (other than Alameda and its staff) whose approval is required to a Transaction Document, concerning the Project or the Project Site without giving the Deputy Executive Director of the ARRA reasonable prior notice and the opportunity to participate with Developer in any such meeting, or negotiations. ARRA agrees that it will not meet, or engage in negotiations, with any governmental officials or staff whose approval is required to a Transaction Document, concerning the Project or the Project Site without reasonable prior notice to Developer. ARRA shall keep Developer informed of the substance of any such meetings and negotiations and shall permit Developer to participate in the same. Further, Alameda and Developer agree to refrain from knowingly engaging in contacts or communications with government officials (other than Alameda staff) in a manner reasonably expected to prejudice the interests of the other Party.

Section 21. Leases.

21.1 New Lease Termination Rights. During the Exclusive Negotiation Period (i) ARRA shall consult with Developer with respect to prospective tenants and terms of any leases of any portion of the Project Site, and (ii) without the written consent of Developer, ARRA shall not enter into any leases with respect to the Property or any portion thereof which does not contain the following clause:

> Section __. Compliance with LIFOC. Notwithstanding any provision of this Lease, Landlord and Tenant hereby agree as follows: (i) Tenant will not do or permit anything to be done in or on the Premises which will cause the occurrence of a default by Landlord under the LIFOC, (ii) if the LIFOC expires or is terminated for any reason, then this Lease shall thereupon terminate, without any liability to Landlord, as if such date were the scheduled expiration date of the

Term, as defined in Section __ below, and (iii) this Lease shall be terminable by Landlord without penalty on sixty (60) days advance written notice.

21.2 Existing Uses. Notwithstanding anything to the contrary in this Section 21, as a condition precedent to the DDA, ARRA or its governmental successors or assigns shall be able to enter into the following leases of the Property with consultation, but without the consent of Developer:

21.2.1 City Hall West (Building 1)

21.2.2 Fire Station No. 5 (Building 6)

21.2.3 O'Club (Building 60) (collectively, Sections 21.2.1 through 21.2.3 shall be referred to as the "**City Buildings**")

Such leases shall provide that it shall be an event of default for the subject tenant (or its permitted successors in interest under this Section 21.2) to cease active use of or cease to occupy said property for a period of greater than three (3) months. Further, such leases shall contain provisions that prohibit the assignment, transfer, sublet, or other disposition of the lease to any party other than Alameda or its constituent bodies. Developer shall accept conveyance of the portions of the Property on which such leases are located subject to such leases, provided that Developer may, at its sole cost and expense, relocate such use of any or all of the City Buildings on terms and conditions approved by Alameda, which approval shall not be unreasonably withheld.

21.3 APT Headend Lease. Notwithstanding anything to the contrary in Section 21.1 above, Alameda has an interest in continuing the lease with APT of Building 2, Wing 3 (the "**APT Headend Lease**") due to the service provided by APT from the leased premises and the related equipment installed thereon, and shall condition conveyance of the portion of the Property subject to the APT Headend Lease on extension of the APT Headend Lease for a long-term, market-rate lease.

Section 22. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 23. Entire Agreement. This Agreement contains the entire agreement of the Parties regarding the Project. This Agreement may be modified only by written agreement signed by the Parties hereto.

Section 24. Captions. Captions at the beginning of each section of this Agreement are for reference only and shall in no way define or interpret any provision hereof.

Section 25. Construction. The provisions of this Agreement have been jointly drafted by the Parties and shall be constructed as to the fair meaning and not for or against any Party based upon any attribution of such Party as the sole source of the language in question.

Section 26. Non-Waiver. No waiver made by either Party with respect to the performance, or manner or time of performance, or any obligation of the other Party or any condition to its own

obligation under this Agreement will be considered a waiver with respect to the particular obligation of the other Party or condition to its own obligation beyond those expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the Party.

Section 27. Time Periods. Any time period to be computed pursuant to this Agreement shall be computed by excluding the first day and including the last day. If the last day falls on a Saturday, Sunday or holiday, the last day shall be extended until the next business day that Alameda is open for business, but in no event shall the extension be for more than three (3) calendar days. All references to days in this Agreement shall mean calendar days unless otherwise expressly specified.

Section 28. Time of the Essence. Time is of the essence with respect to each provision of this Agreement, including, without limitation, each Mandatory Milestone set forth in the Mandatory Milestone Schedule of Performance attached hereto as Exhibit B-1.

Section 29. Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 30. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

Section 31. Exhibits. References in this Agreement to exhibits (unless the context otherwise requires) is to the exhibits described on the List of Exhibits attached hereto, all of which exhibits are hereby incorporated by reference into this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties, who have had the opportunity to consult with their attorneys with respect hereto and who fully and completely understand the terms and provisions hereof, have executed this Agreement as of the date first set forth above.

ARRA:

ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY,
a joint powers authority formed under California law

By: _____

Name: _____

Title: _____

Approved as to form:

By: _____

Name: _____

Title: _____

[SIGNATURES CONTINUE]

CIC:

COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA,
a public body, corporate and politic

By: _____

Name: _____

Title: _____

Approved as to form:

By: _____

Name: _____

Title: _____

[SIGNATURES CONTINUE]

City:

CITY OF ALAMEDA,
a municipal corporation

By: _____

Name: _____

Title: _____

Approved as to form:

By: _____

Name: _____

Title: _____

[SIGNATURES CONTINUE]

Developer:

SCC ALAMEDA POINT LLC,
a Delaware limited liability company

By: _____
Name: Bruce V. Cook
Title: General Counsel

LIST OF EXHIBITS

Exhibit A

Map of the Project Site

[Attached]

EXHIBIT A

Exhibit B-1

Schedule of Performance
(Mandatory Milestones)

All terms not defined herein shall have the respective meanings ascribed to them in the Agreement to which this Exhibit B-1 is attached.

Unless otherwise provided, all Mandatory Milestones are measured from the Effective Date (for example, eight (8) months means the date which is eight (8) months after the Effective Date).

A.	Mandatory Milestone		Submission Date
	1.	Master Project Schedule:	Thirty (30) business days
	2.	Development Concept:	Eight (8) months
	3.	Infrastructure Plan:	Eight (8) months
	4.	Business Plan:	Eight (8) months
	5.	Entitlement Application:	Ten (10) months
B.	Mandatory Milestone		Completion Date
	1.	Project Pro Forma:	Ten (10) months

Exhibit B-2

Schedule of Performance
(Non-Mandatory Milestones)

All terms not defined herein shall have the respective meanings ascribed to them in the Agreement to which this Exhibit B-2 is attached.

Unless otherwise provided, all Non-Mandatory Milestones are measured from the Effective Date (for example, eight (8) months means the date which is eight (8) months after the Effective Date).

Non-Mandatory Milestones described below are good faith estimates by the Parties of the time required to complete the Transaction Documents.

Non-Mandatory Milestone	Completion Date
1. EDC MOA Amendment	**18 months**
a. Finalize Navy Term Sheet	6 months
b. Submit EDC application	10 months
c. Finalize EDC MOA Amendment	18 months
2. NEPA Supplemental Environmental Impact Statement (SEIS)	**24 months**
a. Project scoping	11 months
b. Circulate Draft SEIS	18 months
c. Hearings and comments	18-24 months
d. Finalize SEIS	24 months
3. Section 106 Memorandum	**24 months**
a. Revise historic resources report	7 months
b. Economic study on buildings	15 months
c. Finalize Section 106 Memorandum amendment	24 months

4. USFWS/NMFS Biological Documents	**24 months**
a. Biological Assessment/reinitiate Section 7 consultation with USFWS	6 months
b. Finalize new Biological Opinion with USFWS	18 months
c. Predator Management Agreement	24 months
d. Determine if NMFS Biological Opinion necessary/conduct Biological Assessment	6 months
e. Finalize NMFS Biological Opinion	18 months
5. Early Transfer Documents	**24 months**
a. Finalize Draft Navy Term Sheet	6 months
b. Draft ETCA	12 months
c. Draft Administrative Order (AOC) with Environmental Protection Agency (EPA), Department of Toxic Substances Control, Regional Water Quality Control Board	15 months
d. Draft FOSET	18 months
e. Public Comment/Finalize ETCA, AOC, FOSET, submit to Governor/EPA	21 months
f. Approval by Governor/EPA	24 months
g. Final remediation contract and environmental insurance policies	24 months
6. CEQA Documents	**24 months**
a. Project scoping	10 months
b. Notice of Preparation	11 months
c. Circulate Draft Environmental Impact Report (EIR)	18 months
d. Hearings and comments/finalize EIR	24 months

7. CAA/DDA	**24 months**
a. CAA executed	12 months
b. Draft DDA	18 months
c. Public hearings	18-24 months
d. Approval of DDA	24 months
8. Development Agreement/Entitlements	**24 months**
a. Submit Entitlement Application	10 months
b. Public hearings/approvals	18-24 months
c. Development Agreement finalized and approvals granted	24 months
9. Tidelands Trust Exchange Agreement	**12 months**
a. Submit draft Tidelands Trust Exchange Agreement to California State Lands Commission (CLSC)	3 months
b. Reach agreement on language with CLSC staff	9 months
c. Obtain approval of CLSC	12 months
10. Public Planning Process	**24 months**
a. Introductory meetings/ constraints analysis	3 months
b. First round public planning charrettes	4-6 months
c. Second round public planning charrettes	6-8 months
d. Development Concept public review	10 months
e. Historic Preservation Plan public review	10-12 months
f. Focused topic community meetings	12-18 months
g. Hearings and comments on EIR/DDA/entitlements	18-24 months

Exhibit C

Annual Budget

[Attached]

EXHIBIT C

SUNCAL COMPANIES
ENA Cost Recovery Budget

City Staff Salary and Benefits	Salary	Benefits	Total	24-Month Duration		1st Quarter Negotiating Deposit
<u>City Manager Staff</u>						
Assistant City Manager*	$188,351	$56,505	$244,856	25.00%	$122,428	$15,303
<u>Development Services Staff</u>						
Director, Development Services Department	$172,430	$51,729	$224,159	25.00%	$112,079	$14,010
Base Reuse Division Manager*	$135,645	$40,694	$176,339	75.00%	$264,508	$33,063
Redevelopment Manager	$104,907	$31,472	$136,379	30.00%	$81,827	$10,228
Contract Administrator	$68,478	$20,543	$89,021	3.00%	$5,341	$668
Office Assistant, Base Reuse	$62,132	$18,640	$80,771	15.00%	$24,231	$3,029
<u>Other City Staff</u>						
Assistant City Attorney	$135,645	$40,694	$176,339	15.00%	$52,902	$6,613
Director, PW	$171,887	$51,566	$223,453	5.00%	$22,345	$2,793
City Engineer, PW	$127,914	$38,374	$166,288	15.00%	$49,886	$6,236
Supervising Civil Engineer, PW	$111,740	$33,522	$145,262	15.00%	$43,578	$5,447
Traffic Engineer, PW	$71,473	$21,442	$92,915	15.00%	$27,874	$3,484
Manager, Planning*	$115,671	$34,701	$150,372	50.00%	$150,372	$18,797
Director, Finance	$156,668	$47,000	$203,668	3.00%	$12,220	$1,528
Subotal Salary and Benefits					**$969,594**	$121,199
Consultant/Legal Services						
<u>Legal</u>						
Ellman Burke Hoffman & Johnson (CAA, DDA)					$252,000	$31,500
Fragner, Seifert, Pace and Winograd (CAA, DDA)					$180,000	$22,500
Shute, Mihaly & Weinberger (Tidelands Trust, CEQA, Navy MOA, ETCA, etc.)					$475,000	$59,375
<u>Contractual</u>						
Economic & Planning Systems (Land Economics and Fiscal Impact Analysis)					$365,000	$45,625
Keyser Marston Associates (Land Economics)					$20,000	$2,500
MARC Associates (Inter-governmental Relations)					$168,000	$21,000
Russell Resources (Environmental)					$200,000	$25,000
Engineering Consultants					$100,554	$12,569
Subtotal Consultant/Legal Services					$ 1,760,554	$220,069
TOTAL					$ 2,730,148	$341,268

* These staff members will be billed monthly to the project as a fixed percent Full-Time Equivalent employee; the remaining City staff and consultants will use timesheets to bill time expended on the project.

CITY OF ALAMEDA
Memorandum

To: Honorable Chair and Members of the Alameda Reuse and Redevelopment Authority

Honorable Chair and Members of the Community Improvement Commission

Honorable Mayor and Members of the City Council

From: Debra Kurita
Executive Director/City Manager

Date: July 18, 2007

Re: Exclusive Negotiation Agreement for Alameda Point Between the Alameda Reuse and Redevelopment Authority, the Community Improvement Commission, the City of Alameda, and SCC Alameda Point, LLC (SunCal)

BACKGROUND

On September 21, 2006, Alameda Point Community Partners (APCP) notified the Alameda Reuse and Redevelopment Authority (ARRA) that it was withdrawing as the Alameda Point Master Developer five years after it was selected. APCP cited a downturn in the residential real estate market that no longer supported the $108.5 million land purchase price tentatively negotiated with the Navy as its primary reason for not moving forward. Following APCP's withdrawal from the project, the Navy agreed to an ARRA-sponsored process to identify a new master developer. The Navy's agreement was predicated on a timely process and retention of the $108.5 million purchase price and the previously agreed upon payment schedule contained in the draft conveyance term sheet.

At its October 4, 2006, meeting, the ARRA authorized staff to issue a Request for Qualifications (RFQ) to determine if there were developers interested in becoming the new Alameda Point Master Developer (Master Developer). SunCal responded to the RFQ through initial and subsequent responses. On May 8, 2007, the ARRA selected SunCal as its preferred Master Developer and established a 60-day due diligence and Exclusive Negotiation Agreement (ENA) negotiation period.

The 60-day due diligence period began on May 14 and concluded on July 12. During that period, SunCal established a comprehensive database on Alameda Point built on historic and current documents, studies, ordinances, resolutions, and policies related to

the base. Items provided to SunCal ranged from Navy environmental clean-up documents and ARRA leases to historic preservation studies and wetlands delineation maps. SunCal summarized each document received as part of its due diligence exercise. In addition, SunCal met with staff and ARRA consultants for briefings on affordable housing, historic preservation, fiscal neutrality, the Public Trust, the Biological Opinion, environmental clean-up activities and status, and leasing activity. Staff also facilitated informational meetings between SunCal and the Navy as well as environmental regulators. Simultaneous with this due diligence effort, SunCal worked with staff to negotiate an ENA as discussed below.

DISCUSSION

The purpose of the ENA is to (1) define the redevelopment and entitlement of the Alameda Point project site; (2) provide a framework for the negotiation of a Disposition and Development Agreement (DDA) for Alameda Point; and (3) establish a process for negotiating and executing various other transaction documents, such as California Environmental Quality Act (CEQA) documents, and third-party agreements like the Finalized Navy Term Sheet. The ENA is attached.

Staff and SunCal met on numerous occasions over the last 60 days to negotiate the provisions of the ENA. The following summarizes the major terms of the agreement:

1) **Length of Term**. The term of the ENA, including completion of CEQA review, all entitlements, and a DDA, is 24 months. A "progress extension" is automatically provided if: (i) all mandatory milestones have been achieved; (ii) review of the Project under CEQA is in process; and (iii) a complete Entitlement Application has been submitted and is pending before the City. The extension will continue until Alameda takes action on the Entitlement Application or, if slowed by litigation, until litigation on the project is resolved. A one-year extension may also be considered by mutual agreement of the ARRA Board and SunCal.

2) **Schedules of Performance**. The ENA provides Schedules of Performance that include all mandatory and non-mandatory milestones. Mandatory performance milestones consist of specific SunCal submittals, such as Development Concept, Infrastructure Plan, Business Plan, and Entitlement Application. Mandatory milestones must be completed within specified timelines and are subject to administrative extensions within the overall time frame of the ENA. A midpoint Conditional Acquisition Agreement (CAA) is an optional task and can be pursued if desired by SunCal. The CAA is not a required milestone and will not affect the completion of the mandatory milestones.

   Third-party agreements are non-mandatory milestones. If any third-party agreement, such as special legislation for Tidelands Trust, is not finalized before

the DDA is approved, then the DDA will outline performance milestones for finalizing any outstanding third-party agreements and any remedies for not meeting those milestones. Exhibit B of the ENA outlines the proposed timelines for both mandatory and non-mandatory milestones. Additionally, the ENA requires that SunCal submit a Project Master Schedule to the ARRA within 30 days of execution of the ENA and on a quarterly basis thereafter.

3) **Initial Payment and Cost Recovery**. SunCal paid $100,000 to the ARRA at the commencement of the ENA negotiations, and within five days of execution of the ENA, will pay an additional $900,000 to the ARRA for a total of $1 million. The deposit will be placed in an interest-bearing account and will be applied to the land purchase price, if the project site is conveyed to the Developer. If SunCal defaults under the terms of the ENA or terminates this agreement, it forfeits any right to the $1 million.

   The ENA also includes cost recovery provisions that require SunCal to reimburse the ARRA for its pre-development costs, including third-party consultant and legal costs and ARRA staff time. The ENA also outlines provisions for amending the budget, as necessary. Exhibit C of the ENA is the proposed cost recovery Annual Budget, which is estimated at $2.7 million over the 24-month term of the ENA. SunCal estimates that it will expend approximately $10 million during the ENA period.

4) **Project Labor Agreement**. SunCal has agreed to negotiate in good faith to enter into a project labor agreement for the construction trades.

5) **Fiscal Neutrality**. The ENA includes provisions for the mitigation of any adverse impacts of the project on the current and future General Fund budget. In addition, the provision in the ENA related to the use of tax increment financing places a priority on the Community Improvement Commission (CIC) and ARRA honoring their debt and operating expense obligations before tax increment funding flows to the project.

6) **Project Pro Forma**. The required components of the Project Pro Forma, jointly prepared by Alameda and SunCal, are outlined in the ENA and include provisions related to profit participation and the Internal Rate of Return (IRR). As currently proposed, the IRR shall be based on all appropriate costs, with eligible costs to be negotiated at a later date, and achieve a 20 to 25 percent return to developer, provided, however, that the precise IRR shall be subject to negotiation of the parties as part of the DDA. Additionally, any profit participation by the CIC from the project, if public tax increment financing is used, will occur after SunCal receives the IRR negotiated as part of the DDA.

7) **Existing City Leases/Uses**. There are four existing City uses specified in the ENA that will be continued after transfer of the land from the CIC to SunCal. These uses include City Hall West (Building 1), Fire Station #5 (Building 6), Alameda Power & Telecom Headend (Building 2, Wing 3), and the O'Club (Building 60). If SunCal decides to redevelop any of these buildings, it will be responsible for relocating the public use to a comparable facility at its sole expense. Other existing City uses or leases may be included in the final development plan but will be negotiated as part of the DDA.

8) **Transfers**. As stated in the RFQ process, SunCal does not self-finance development projects, but instead seeks equity funds from third-party partners. While SunCal may invest some equity funds into the project, its primary contribution to the project will be expertise and experience successfully facilitating complex development projects. Given this partnership structure, it is crucial for SunCal that the ENA allow for an automatic transfer to a developer entity that will include SunCal and its third-party equity partner, subject to certain terms and conditions to which all parties can agree. The resulting ENA has terms and conditions that allow automatic transfers while protecting Alameda's long-term interest and investment in Alameda Point.

There are three major components of the agreed upon terms and conditions of the automatic transfer provision:

(i) **Financial Stake**. It is important that SunCal have sufficient financial stake in the project to create an incentive for it to remain committed to the project. The ENA states SunCal must contribute at least 15 percent of the cash capital required to fund the pre-development phase of the project, and at least five percent of the equity required for funding the full implementation of the project, subject to further negotiation in the DDA.

(ii) **Day-to-Day Management and Control**. The ARRA selected SunCal through a competitive RFQ process and will be assured that the SunCal principals represented to the ARRA as the project leadership and team remain in control of the day-to-day management of the project. The ENA does not allow SunCal to be removed from day-to-day control of the project unless the replacement project management entity is acceptable to the ARRA.

(iii) **Removal of Developer**. The ARRA selected SunCal based on its specific qualifications and expertise. Therefore, the ENA states that the ARRA must consent to the removal of SunCal during the pre-development phase, and that the DDA will specify the terms of a

"qualified developer" for potential replacement of SunCal during project implementation.

Upon execution of the ENA, SunCal will commence its 24-month process to achieve the milestones outlined in the ENA Schedule of Performance.

BUDGET CONSIDERATION/FINANCIAL IMPACT

There is no financial impact on the General Fund, CIC, or ARRA budgets. The cost recovery provision in the ENA will ensure that the selected developer pays for staff costs and consultant expenses.

RECOMMENDATION

Approve the Exclusive Negotiation Agreement with SCC Alameda Point, LLC.

Respectfully submitted,

Leslie A. Little
Development Services Director

By: Debbie Potter
Manager, Base Reuse & Community Development Division

By: Jennifer Ott
Redevelopment Manager

LAL/DP/JO:sb

Attachment
1. Alameda Point Exclusive Negotiation Agreement

ALAMEDA POINT
EXCLUSIVE NEGOTIATION AGREEMENT

THIS ALAMEDA POINT EXCLUSIVE NEGOTIATION AGREEMENT (this "**Agreement**") is entered into as of July ____, 2007 (the "**Effective Date**"), by and between the **ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY**, a Joint Powers Authority established by the City of Alameda and the Community Improvement Commission under the California Joint Exercise of Powers Act and a public entity lawfully created and existing under the State of California (the "**ARRA**"), the **COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA**, a public body corporate and politic (the "**CIC**"), and the **CITY OF ALAMEDA**, a municipal corporation (the "**City**", and together with ARRA and CIC, "**Alameda**") and **SCC Alameda Point LLC, a Delaware limited liability company** ("**Developer**"). Alameda and Developer are individually referred to as a "**Party**" and collectively referred to as the "**Parties**".

RECITALS

This Agreement is entered into upon the following facts, understandings and intentions of the Parties:

A. The United States of America, acting by and through the Department of the Navy ("**Navy**") is the owner of certain real property located within the City of Alameda, State of California commonly referred to as the former Alameda Naval Air Station, now known as "**Alameda Point**", which was closed as a military installation and is subject to disposal pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1991, as amended (Pub. Law No. 101-510). The property that is the subject of this Agreement consists of approximately 1000 acres located at Alameda Point referred to as "**Phase 1**", "**Phase 2**" (including the area commonly known as the "Northwest Territories"), and "**Phase 3**" (which is included strictly for purposes of entitlement at a programmatic level) (collectively, the "**Project Site**"). Phase 1, Phase 2 and Phase 3 are shown on the "**Map of the Project Site**", attached hereto as Exhibit A. Phase 1 and Phase 2 are sometimes referred to collectively as the "**Property**". Certain portions of Alameda Point are not part of the Project Site.

B. In accordance with procedures established under federal and California state law governing the planning, disposition and reuse of closed military bases, ARRA adopted the Alameda Point Community Reuse Plan (the "**Community Reuse Plan**") on January 31, 1996, with subsequent amendments in 1997.

C. On March 3, 1998, the City Council of the City approved and adopted (1) the Community Improvement Plan (the "**APIP Community Improvement Plan**") for the Alameda Point Improvement Project (the "**APIP Project**") by Ordinance No. 2754. The property subject to the APIP Community Improvement Plan is referred to herein as the "**APIP Project Area**". The Project Site is located within the APIP Project Area.

D. Subsequently, in October 1999, the Navy issued a Final Environmental Impact Statement for the Disposal and Reuse of Naval Air Station Alameda and the Fleet and Industrial

Supply Center, Alameda Annex and Facility. The Record of Decision regarding the disposal and reuse was issued by the Navy on February 29, 2000.

E. The Navy and ARRA entered into a Lease in Furtherance of Conveyance dated June 6, 2000, as amended by that certain Amendment No. 1 to the Lease in Furtherance of Conveyance between the United States of America and the Alameda Reuse and Redevelopment Authority for the Former Naval Air Station Alameda, dated November 28, 2000 (the "**LIFOC**"), and a No-Cost Economic Development Conveyance Memorandum of Agreement dated June 6, 2000 (the "**EDC MOA**").

F. In 2003, the City amended its General Plan to incorporate the policies and land use designations contained in the Community Reuse Plan. The allowable number of residential units and commercial square footage differed from those contained in the ARRA's 1998 EDC application. As a result, the Navy questioned whether ARRA remained eligible for a No-Cost EDC. In lieu of submitting an amendment to the No-Cost EDC application, ARRA elected to negotiate a "For-Cost" EDC with the Navy.

G. In 2004, ARRA committed $3.5 million to a pre-development effort to: (1) prepare a land plan in conjunction with the community that would identify key entitlement issues and provide more certainty to the project approval process and which culminated in the Alameda Point Preliminary Development Concept dated February 1, 2006, prepared by ROMA Design Group (the "**PDC**"); and (2) negotiate a draft conveyance term sheet ("**Draft Navy Term Sheet**") with the Navy.

H. On October 4, 2006, ARRA authorized a Request for Qualifications ("**RFQ**") process to select a developer willing to redevelop the Project Site. SCC Acquisitions, Inc., a California corporation ("**SCC Acquisitions**"), an affiliate of Developer, responded to the RFQ through an initial response on or about December 4, 2006 and through a subsequent response on March 8, 2007 (the "**Developer Response**").

I. On May 8, 2007, based on the Developer Response, ARRA selected SCC Acquisitions to have an exclusive 60-day due diligence period (the "**Due Diligence Period**") to determine its interest in becoming the new master developer of the Project Site and entering into this Agreement.

J. On May 14, 2007, ARRA and SCC Acquisitions dba SunCal Companies entered into that certain Alameda Point Memorandum of Agreement (the "**Developer MOA**"), which, among other things, established a sixty (60) day period for the negotiation of this Agreement.

K. The purposes of this Agreement are to (1) define the redevelopment and entitlement of the Project Site (the "**Project**") (2) provide a framework for the negotiation of the terms of a Disposition and Development Agreement (the "**DDA**") for the Project and the Property, and (3) establish timeframes for and to set forth the process by which the Parties shall negotiate and execute the DDA and the Transaction Documents (as defined in Section 3 below).

In consideration of the mutual covenants contained herein, Alameda and Developer agree as follows:

Section 1. Negotiations.

1.1 Good Faith Negotiations. The Parties, during the Exclusive Negotiation Period set forth in Section 2.1 of this Agreement, shall negotiate diligently and in good faith to prepare the Transaction Documents (as defined in Section 3 below) and complete the tasks set forth in Section 3 below relating to the Project and the Project Site.

1.2 Exclusive Negotiations. During the Exclusive Negotiation Period, Alameda covenants and agrees that it shall negotiate exclusively with Developer regarding the Project and the Project Site and shall not solicit, market to or negotiate with any other person or entity regarding the Project and the Project Site or solicit or entertain bids or proposals to do so; except that Alameda may, in the routine course of governmental affairs, contact (or be contacted by), discuss, or meet with the Navy or any other governmental entity or Alameda may respond to inquiries regarding Phase 3, and Developer acknowledges that such contact, discussions, meetings, or responses may pertain in whole, or in part, to the Project and/or the Project Site. The Parties acknowledge that the Navy may, in its discretion, pursue an alternative disposition of the Phase 3 portion of the Project Site.

1.3 Not a DDA. The Parties do not intend this Agreement to be a DDA, purchase agreement, ground lease, license, option or similar contract.

Section 2. Term.

2.1 Term of this Agreement. The term of this Agreement (the "**Exclusive Negotiation Period**") shall commence on the Effective Date and, subject to extension pursuant to Section 2.2 below, shall terminate on the second anniversary of the Effective Date.

2.2 Extension of the Exclusive Negotiation Period.

2.2.1 Mutual Extension. The Parties acknowledge that their ability to prepare the Transaction Documents and complete the tasks set forth in Section 3 below is dependent to some extent on reaching agreement with certain third parties, including the Navy (for the transfer of the Property) and the California State Lands Commission (with respect to the public trust), and may also be dependent on achieving certain regulatory approvals and satisfying certain other conditions that are outside of their control. If before the execution of the DDA by the Parties, any of such third-party agreements, regulatory approvals or other conditions are not finalized, obtained or satisfied, then to the extent practical the Parties shall in good faith negotiate the DDA and characterize such third-party agreements, regulatory approvals or other conditions as conditions precedent to the obligations of the Parties to the close of escrow for conveyance of the Property pursuant to the DDA. Notwithstanding the foregoing, if the Parties are unable to meet the date for completion of the Non-Mandatory Milestone (as defined in Section 4.3 below) for the DDA set forth on the Schedule of Performance (Non-Mandatory Milestones) attached hereto as Exhibit B-2 (the "**Non-Mandatory Milestone Schedule of Performance**") due to the inability of the Parties to complete a Transaction Document because of the action(s) or inaction(s) of a third party, then the Exclusive Negotiation Period may be extended up to one (1) year by the mutual agreement of Developer and Alameda (as determined by its Board of Directors, Board of Commissioners and City Council).

2.2.2 Progress Extension. If Alameda can make the following findings (as determined by its Board of Directors, Board of Commissioners and City Council): (a) that Developer has met all of the Mandatory Milestones (as defined in Section 4.2 below), as the same have been extended as provided herein, or except to the extent the Mandatory Milestone for the Project Pro Forma (as defined in Section 3.2.4 below) has been waived by Alameda pursuant to Section 4.2.2 below; (b) Developer has provided a Project description sufficient to permit the City to review the Project under the California Environmental Quality Act (Public Resources Code §§ 21000-21177) ("**CEQA**"); and (c) Developer's Entitlement Application (defined in Section 3.2.6 below) has been filed with the City, the Exclusive Negotiation Period shall be extended automatically until Alameda has made its final determination with respect to the approvals requested in the Entitlement Application and the period for any legal challenge thereto has passed without such challenge, or if such challenge has been made, such challenge has been fully and finally resolved.

2.2.3 Litigation Force Majeure Extension. The Exclusive Negotiation Period shall be extended automatically in the manner provided in Section 5 below.

2.3 Expiration of the Term of this Agreement. This Agreement shall automatically terminate upon the earlier of (i) the effective date of a Conditional Acquisition Agreement (the "CAA") (as described in Section 3.3 below) executed by the Parties, or (ii) expiration of the Exclusive Negotiation Period, as extended pursuant to Section 2.2 above, and neither Party shall have any further right or obligation under this Agreement except with respect to any obligation which expressly survives the termination or expiration of this Agreement.

Section 3. Tasks to be Completed. During the Term, Alameda (or the applicable constituent thereof) and Developer shall negotiate diligently and in good faith the following agreements or documents and use commercially reasonable efforts to complete the following tasks within the time periods provided in the Schedules of Performance (as defined in Section 4.1 below) as the same may be amended pursuant to Section 2.2 above. The term "**Transaction Documents**" shall include all documents, plans and agreements described in this Section 3.

3.1 Finalized Navy Term Sheet. Developer shall participate with Alameda to negotiate with the Navy to finalize the Draft Navy Term Sheet, setting forth the terms and conditions for the conveyance of Alameda Point to ARRA, in a manner satisfactory to Alameda and Developer (the "**Finalized Navy Term Sheet**"), which shall, to the extent possible, be consistent with the Plans (as defined in Section 3.2 below) and other objectives contained herein.

3.2 Project Planning. Developer, at its sole cost, but subject to review and comment by Alameda, shall generate the necessary analysis, plans, studies and pro formas to be able to fully describe all aspects of the proposed Project and to prepare the DDA (and, if applicable, a CAA). Developer shall work with and make presentations to staff, elected and appointed representatives of Alameda, other governmental entities and community stakeholder groups as mutually determined by the Parties to permit preparation of the DDA (and, if applicable, a CAA). The purposes of these presentations will be to keep decision makers abreast of the process and to solicit input from key stakeholders regarding the plan. The final DDA (and, if applicable, a CAA) shall be based on and incorporate the following plans (collectively, the "**Plans**") and the Project Pro Forma (as defined in Section 3.2.4 below):

3.2.1 Development Concept. Developer shall prepare a "**Development Concept**" setting forth conceptual designs for the Project and Project Site and a fully descriptive program of uses. The Development Concept shall include an update of that certain Sports Complex Master Plan prepared by Moore Iacofano Goltsman, Inc. dated May 19, 1997 (the "**Sports Complex Master Plan**"). It shall include a description of the phasing plan for the Project and a proposed scope of work and schedule of performance, including all key milestones for design, development and construction to completion of the Project.

3.2.2 Infrastructure Plan. Developer shall prepare an "**Infrastructure Plan**" which shall set forth the existing infrastructure associated with the Project Site and shall describe improvements and engineering required to implement the proposed Development Concept. In preparation of the Infrastructure Plan, Developer shall analyze the existing infrastructure and prepare a detailed analysis of infrastructure requirements, including a circulation, traffic, transportation and parking plan, a phasing plan and a financing plan (including initial construction cost estimates) for development of required infrastructure. The Infrastructure Plan shall include analysis of the environmental and geotechnical condition of the Project Site and identification of environmental issues to be resolved and associated cost estimates.

3.2.3 Business Plan. Based upon the Development Plan and the Infrastructure Plan, Developer shall prepare a "**Business Plan**" that describes the financial and organizational characteristics of the Project in detail sufficient to support negotiation of the DDA (and, if applicable, a CAA). Specifically, the Business Plan will (i) include an organizational plan, a marketing program, a phasing and financing plan, a public benefit plan, a public financing plan, a feasibility analysis, a project schedule, a project pro forma in electronic spreadsheet format, (ii) include documentation and descriptions of all key cost and revenue assumptions and resulting financial returns, and any additional supporting narrative, (iii) include Developer's plan for financing the Project and related financial assurances, and (iv) provide an overview of how the Project will commence, function, achieve success, manage risk, raise capital and provide fiscal neutrality to Alameda (as described in Section 3.2.4.2), taking into account initial assessments of infrastructure cost and phasing, environmental issues, market analysis, economic modeling, financial modeling and other required technical studies. The Business Plan shall be consistent with Section 3.7.5 hereto. It is the intent of the Parties that negotiations of the Business Plan shall be contemporaneous with negotiations of the Development Concept.

3.2.4 Project Pro Forma. Alameda and Developer shall jointly prepare a pro forma for the Project (the "**Project Pro Forma**"). Alameda and its financial consultant shall control and maintain the Project Pro Forma, which shall be made readily available to Developer in electronic spreadsheet format. The Project Pro Forma shall reflect that except as described in Section 3.7.5 below, Alameda shall have no financial obligation associated with Developer's development on, or related to, the Project Site. The Project Pro Forma shall contain all financial considerations of the Project to be incorporated into the DDA, including a method for calculating the following elements:

3.2.4.1 IRR. The unleveraged internal rate of return ("**IRR**") to Developer for the Project, which IRR shall be based upon all appropriate costs (as defined in the Project Pro Forma), including personnel costs, incurred by Developer directly related to the Project and the Project Site, including pre-development expenditures and an agreed upon general

and administrative fee, to achieve an IRR to Developer of twenty percent (20%) to twenty-five percent (25%), provided, however, the precise IRR shall be subject to negotiation of the Parties as part of the DDA.

3.2.4.2 Fiscal Neutrality. Developer shall cooperate in implementing a municipal services district or other funding mechanism(s) (public or private) to ensure the Project is fiscally neutral with respect to the City General Fund. The funding mechanism is intended to (a) result in no negative impact to the City's General Fund, taking into consideration the reasonably anticipated revenues to the City's General Fund from the Project Site, and (b) avoid negative effects to the existing or future operations of the City. The model for the funding mechanisms provided in the Project Pro Forma shall provide for future fiscal neutrality and preserve the current fiscal neutrality with respect to the General Fund, which shall include funding for normal and customary municipal services, such as police and fire services.

3.2.5 Entitlement Plan. Developer shall develop an "**Entitlement Plan**" for the Project and the Project Site that shall include a list and provide a timeline for obtaining all land use entitlements and approvals it will seek from the City, including (a) a General Plan amendment, if required, (b) a master plan (the "**Master Plan**") pursuant to the MX zoning designation in the Alameda Municipal Code (the "**MX Zoning**") for the development of the Project Site, (c) a zoning amendment(s), (d) subdivision approval, (e) a development agreement (the "**Development Agreement**") prepared pursuant to California Government Code Section 65864 *et seq.*, vesting in Developer the right to develop the Project to the scope, uses, densities and intensities described in the Master Plan and other implementing regulatory documents and necessary to implement the Development Plan, (f) environmental review pursuant to CEQA, and if applicable, the National Environmental Policy Act ("**NEPA**"), (g) an agreement between Developer and Alameda to provide for expedited processing by the City of all land use entitlement applications including all environmental review required under CEQA and funding thereof by Developer (the "**Expedited Processing Agreement**"), and (h) such other entitlements and approvals as Developer may request for the Project Site. Developer shall use Best Efforts (as defined in Section 15.5 below) to implement and prosecute to completion the Entitlement Plan.

3.2.5.1 Project Master Schedule. As a component of the Entitlement Plan, the Developer shall prepare and maintain a project master schedule (the "**Project Master Schedule**") that sets forth, in reasonable detail, the expected tasks necessary to complete all of the Mandatory and Non-Mandatory Milestones, Entitlements, and at the Developer's discretion, subsequent approvals and the anticipated dates that these tasks are expected to be completed. The Developer shall submit the initial Project Master Schedule to the ARRA within thirty (30) business days from the Effective Date of this Agreement and shall update such schedule and deliver the updated schedule to the ARRA on a quarterly basis thereafter.

3.2.6 Entitlement Application. In order to meet the Mandatory Milestone for the Entitlement Application, Developer shall submit its application for the following items contemplated in the Entitlement Plan: (i) an initial draft of the Master Plan which shall include all applicable components required under MX Zoning; (ii) application for CEQA review; and (iii) an Expedited Processing Agreement (collectively, the "**Entitlement Application**"). Subsequent to submittal of the Entitlement Application, Developer shall use Best Efforts to

submit all required supplemental information sufficient for the Entitlement Application to be promptly determined to be complete by Alameda. Subsequent approvals will be necessary in order to develop the Project, which may include, without limitation, development plans; master demolition, infrastructure, grading and phasing plan; subdivision approvals; design review approvals; demolition permits; improvement agreements; infrastructure agreements; grading permits; building permits; site plans; sewer and water connection permits; and other similar requirements.

3.3 CAA. On Developer's request and using the information developed in the Plans, Alameda and Developer shall negotiate a CAA which will provide the framework for the proposed transaction and the terms of the DDA, including but not limited to, the terms by which ARRA shall acquire and convey the Property to Developer (the "**Property Transfer(s)**"). If a CAA is developed within the Exclusive Negotiation Period, it is the intent of the Parties that the CAA will set forth (i) a development program consistent with the Plans and the Project Pro Forma and (ii) the terms and conditions precedent to the Property Transfer(s) including, without limitation, approval of the CEQA Documents (as defined in Section 3.4 below) and the DDA by Alameda. Upon the request of Developer, Alameda shall take all necessary action to place the CAA on the agendas of each constituent of Alameda for a determination by each as to whether to approve the CAA and upon approval thereof, Developer and Alameda shall execute the CAA. The CAA shall also include provisions described in Section 3.6.6 below.

3.4 CEQA Documents. The Plans shall be of sufficient specificity to permit the subsequent preparation of the documents required for environmental review of the Project as required by CEQA (the "**CEQA Documents**"), including an environmental impact report or such other information and reports as may be required to permit Alameda to comply with the requirements of CEQA. Preparation of the CEQA Documents shall be a Non-Mandatory Milestone and shall commence following satisfaction of the Mandatory Milestone for the Entitlement Application. Execution of the DDA by the Parties and the closing of the Property Transfer(s) under the DDA shall be contingent upon certification of the CEQA Documents and adoption of the mitigation measures described therein.

3.5 Conditions to Property Transfer(s). The following shall be conditions precedent to the Property Transfer:

3.5.1 An amendment of the EDC MOA to permit a conveyance of the Property from the Navy to ARRA in accordance with the Finalized Navy Term Sheet (the "**EDC MOA Amendment**").

3.5.2 As required by the Finalized Navy Term Sheet, Developer shall provide evidence adequate to ARRA of Developer's ability to secure environmental insurance, including but not limited to a Cleanup Cost Cap policy and a Pollution Legal Liability policy (the "**PLL Policy**") or policies to the extent such are required to execute any necessary Early Transfer, provided that the PLL Policy shall not only be acceptable to the Navy, but shall also be acceptable to Alameda and shall name Alameda as additional insured(s), which acceptance by Alameda shall not be unreasonably withheld.

3.5.3 Environmental documents including financial assurance to regulators, early transfer package including a Finding of Suitability for Early Transfer (the "**FOSET**") and Covenant Deferral Request (the "**CDR**"), Environmental Services Cooperative Agreement (the "**ESCA**") or Early Transfer Cooperative Agreement (the "**ETCA**") or similar agreement, and consent orders among the environmental regulatory agencies and other State of California and federal officials to the extent such documents are necessary to facilitate conveyance of the Property pursuant to the schedule of performance to be included in the DDA.

3.5.4 A tidelands trust exchange agreement or similar agreement between the City and the California State Lands Commission to implement the exchange of lands into and out of the tidelands trust area (the "**Tidelands Trust Exchange Agreement**"), pursuant to California legislation adopted in 1999.

3.5.5 An amendment of that certain Memorandum of Agreement Among the United States Navy, the Advisory Council on Historic Preservation and the California State Historic Preservation Officer Regarding the Layaway, Caretaker Maintenance, Leasing and Disposal of Historic Properties on the Former Naval Air Station, Alameda, California, dated September 1, 1999 (the "**Section 106 Memorandum**").

3.5.6 A predator management agreement or similar agreement ("**Predator Management Agreement**") among Alameda, Developer and the U.S. Fish & Wildlife Service (the "**USFWS**") or other parties related to the effort to manage the predators of the California Least Tern pursuant to the Biological Opinion issued by the Navy on March 22, 1999 (the "**USFWS Biological Opinion**"), in furtherance of the Endangered Species Act.

3.5.7 Environmental review of the Project pursuant to CEQA, and if applicable, NEPA, and certification by the lead agency of the CEQA Documents (collectively, "Certification"), with all relevant appeal periods with respect to each such Certification having expired without the filing of a challenge or appeal, or if a challenge to or appeal of any Certification is filed, with such challenge or appeal resolved in a manner reasonably satisfactory to Developer that shall permit construction of the Project substantially as described in the DDA and the Entitlement Application filed with Alameda.

3.5.8 Approval by the City and, as applicable, the CIC, ARRA or any other relevant governmental agency, of the following zoning and entitlement applications and agreements for the Project ("**Approvals**"), with all relevant appeal periods with respect to each such Approval having expired without the filing of a challenge or appeal, or if a challenge to or appeal of any Approval is filed, with such challenge or appeal resolved in a manner reasonably satisfactory to Developer that shall permit construction of the Project substantially as described in the DDA and the Entitlement Application filed with Alameda:

3.5.8.1 The entitlements and approvals described in Section 3.2.5(a) through (g);

3.5.8.2 DDA (as described in Section 3.6 below);

3.5.8.3 APIP Community Improvement Plan amendment and Five-Year Implementation Plan amendment, if required;

3.5.8.4 Zoning map amendment;

3.5.8.5 Development Plan and Design Review, at Developer's sole discretion;

3.5.8.6 Parcel, Tentative or Vesting Tentative Maps, at Developer's sole discretion.

3.5.9 If applicable, revision of the USFWS Biological Opinion (the "**USFWS Biological Opinion Revision**").

3.5.10 If applicable, a biological opinion issued by the National Oceanic & Atmospheric Administration National Marine Fisheries Service (the "**NMFS Biological Opinion**").

3.6 DDA. The DDA will provide the mechanics and execution of the business terms, will define the legal and administrative mechanisms to implement the Property Transfer(s) and will establish the essential terms and framework of the Property Transfer(s), including specifying funding sources, Project phasing, the scope of development, terms of the Property Transfer(s), a schedule of performance, environmental clean-up responsibilities of Developer and the Navy, and specific obligations of Developer and Alameda in carrying out redevelopment of the Project Site. The DDA shall be consistent with the terms of the CAA if the Parties enter into a CAA, and shall include the following key terms and provisions:

3.6.1 Planning and Financial Terms. The DDA shall incorporate the provisions of the Development Plan, the Infrastructure Plan and the Business Plan and shall include all financial considerations for the Project, including those described in the Business Plan and Project Pro Forma, as updated and refined per CEQA (and if applicable, NEPA) review of the Project.

3.6.2 Transaction Documents. All applicable terms of the completed Transaction Documents, and provision for completion and incorporation of applicable terms of all Transaction Documents that are to be completed after execution of the DDA, and if applicable, prior to close of escrow pursuant to Section 2.2.1 above.

3.6.3 Environmental Remediation Liability. The DDA will provide for the liability of the Parties, if any, in respect of any environmental remediation on, or related to, the Project or Project Site.

3.6.4 Project Completion. Use of regulatory and financial mechanisms to achieve completion of the development of each phase of the Project in a prompt and reasonable manner, and remedies of Alameda for failure to complete. Such mechanisms shall include, but will not be limited to:

3.6.4.1 Provisions for the development of certain uses, phases, or sub-phases concurrently with other uses, phases, or sub-phases.

3.6.4.2 Provisions for the completion or partial completion of phases or sub-phases prior to the commencement of development of other phases or sub-phases.

3.6.4.3 Provisions for the timing and manner in which Developer shall provide drawings, elevations, models and other depictions of the design and construction details for development of the Project, and the timing and method for securing all required regulatory approvals.

3.6.4.4 A schedule of performance to be attached as an exhibit to the DDA, covering the Property Transfer(s) including leasing with respect to tidelands trust lands and assignment of existing leases (such as Buildings 22 and 40), permitting and development obligations and milestones. The DDA schedule of performance shall include obligations such as the filing of applications for tentative maps; the filing of final maps; the completion of, or bonding for, infrastructure; and post-conveyance infrastructure and vertical development obligations.

3.6.4.5 Extensions for performance due to force majeure or litigation challenging entitlements, subject to periods to be negotiated in the DDA.

3.6.4.6 Appropriate financial assurances, which may include performance and payment guarantees, to assure development of conveyed phases.

3.6.4.7 Terms providing for, and assuring the development of, all affordable housing by phases pursuant to the requirements of Community Redevelopment Law; the Housing Element of the General Plan, and that certain Settlement Agreement effective as of March 20, 2001 by and among the City, CIC, ARRA, the Housing Authority, Catellus Development Corporation, Renewed Hope Housing Advocates, and Arc Ecology. The affordable housing shall include, and Developer shall be entitled to a credit against its affordable housing obligation for, those certain 157 units of multi-family attached units that may be constructed by the Housing Authority of the City of Alameda (the "**Housing Authority**") on the Project Site on terms and conditions acceptable to Alameda, the Housing Authority and Developer which may include the following: (a) that the Housing Authority construct such units in "partnership" with Developer or a nonprofit or for-profit housing developer entity selected by the Housing Authority; (b) that the Housing Authority have an ownership interest in such housing; (c) approval by the Housing Authority of the development site(s) for such housing; (d) determination of the levels of affordability (it is the intention of the Parties that such housing shall first satisfy the very low and low income affordability requirements of the Project); (e) the site(s) be prepared for vertical development by Developer; and (f) the Housing Authority may receive a negotiated development fee.

3.6.4.8 Default and termination provisions (including reasonable cure periods), for failure to acquire portions of the Property, to apply for entitlements, or to develop the Project pursuant to the terms of the DDA and the DDA schedule of performance; which shall include rights of reverter in the CIC to conveyed land.

3.6.4.9 Requirements for the Developer to negotiate in good faith to enter into a project labor agreement for the construction trades.

3.6.5 Personal Property. Provisions for the disposition of personal property owned by Alameda located on, or related to, the Property.

3.6.6 Transfers. Provisions for Transfer (as defined in Section 9.2.4.5 below), which shall include (i) a mechanism for parties contributing debt or equity to the Project to remove Developer from day-to-day management of the entity that executes the DDA (the "**DDA Development Entity**") upon the occurrence of a default under the DDA Development Entity's operating or partnership agreement, provided that Developer is concurrently replaced with a substitute developer controlling day-to-day management that meets specified criteria as a "qualified developer", including the approval of Alameda, which approval will not be unreasonably withheld, conditioned or delayed, and (ii) the right of Developer to Transfer, on or after the date on which the DDA is signed, Ownership Interests (as defined below) in Developer so long as (A) SCC Acquisitions, LLC, a Delaware limited liability company ("**SCC Acquisitions, LLC**") or its wholly owned subsidiary shall continue to manage Developer on a day-to-day basis and have contributed to Developer at least five percent (5%) of the cash equity contributed and to be contributed by all of the parties holding Ownership Interests in Developer and (B) Alameda has determined that Developer has the financial ability, including debt and/or equity financing, to carry out its obligations under the DDA, which determination by Alameda shall not be unreasonably withheld, conditioned or delayed.

3.6.7 Leases. Provisions for addressing the leases described in Section 21 below.

3.7 Certain Overall Principles and Undertakings. The documents and actions contemplated in this Section 3 shall comply with the following general principles and be consistent with the following undertakings and agreements, all of which shall be applicable to the Project as a whole.

3.7.1 Dedication of Alameda Personnel; Response Time; Approvals.

3.7.1.1 Alameda and its constituent entities shall dedicate staff and other resources which are adequate at all times to perform the responsibilities of Alameda under this Agreement, and to the best of its ability, Alameda and its constituent entities shall assure that there is continuity of its staff throughout the life of the Project.

3.7.1.2 Subject to the Expedited Processing Agreement, Alameda shall use Best Efforts to respond to each submission of Developer required hereunder within a reasonable period from the date of submittal of the same. Alameda and its constituent entities shall keep Developer apprised of the anticipated timing of Alameda's response.

3.7.2 Project Infrastructure. The planning, construction, financing and payment for on and off-site Project infrastructure are obligations of Developer and not Alameda, except to the extent that public financing is provided by Alameda for the Project as described in Section 3.7.5 below.

3.7.3 Transportation. Developer shall, in the DDA, commit to (i) the implementation of transportation mitigation measures identified for the Project pursuant to the CEQA Documents, (ii) implementation of, or compliance with, conditions of approval pertaining

to transportation, and (iii) participation in transportation demand management and transportation systems management programs.

3.7.4 Compliance with CIC Requirements. Developer shall comply, or cause compliance, with all CIC requirements applicable to development of the Project, including, but not limited to: (i) the nondiscrimination and nonsegregation requirements of the APIP Community Improvement Plan for the APIP Project Area, and (ii) any requirements for training and employment opportunities to be extended to low-income residents of the Project Site, including requirements pursuant to those certain Standards of Reasonableness for Homeless Uses at Alameda Naval Air Station, as amended by that certain First Amendment to the Standards of Reasonableness, dated October 1999 (collectively, the "**Standards of Reasonableness**").

3.7.5 Tax Increment and Other Public Financing.

3.7.5.1 Tax Increment Financing. To the extent contemplated by the Project Pro Forma and committed to in the DDA, and subject to any conditions imposed thereon, including demonstrated need, priority of repayment of CIC's and ARRA's existing debt and operating expenses, priority of public benefit funding, the CIC shall make tax increment generated by the Project available to obtain public financing to fund project costs eligible under applicable law. The DDA or related documents, as applicable, shall determine the timing and phasing of development and order of priority of use of any tax increment committed to the Project by Alameda and such committed public funding shall be taken into account in the Project Pro Forma and the DDA pro forma.

3.7.5.2 Assessment Districts. Subject to the provisions of Section 3.7.5.1 above, the DDA shall contain provisions which allow Alameda, subject to exercise of its sole discretion, to make available additional public financing, including use of assessment districts and formation of a municipal services district and/or community facilities district. Developer shall cooperate in the formation of such assessment or taxing district.

3.7.5.3 Financial Protections. All public financing provided by Alameda shall be conditioned upon the inclusion of customary adequate protections for the CIC of its financial position and shall require rights of profit participation after Developer receives the IRR negotiated as part of the DDA as described in Section 3.2.4.1 above.

3.7.6 Alameda Power & Telecom. Developer understands that Alameda Power & Telecom ("APT") desires to market and provide telecommunications and other services to its telecommunication customers within the Project and is willing to negotiate in good faith with APT with respect to providing such services to the Project.

3.7.7 DDA and EDC MOA. The DDA shall comport with the EDC MOA as it may be amended.

3.7.8 Conditional Commitment to Terms, Terms not Exclusive. If the CIC and/or ARRA choose to approve and execute a DDA (and, if applicable, a CAA) with Developer for the Project Site, and Developer elects to execute the DDA (and, if applicable, a CAA), the Parties agree that such DDA (and, if applicable, a CAA) shall contain, implement, and shall be internally consistent with, the provisions referenced, described, or set forth in this Section 3,

subject to mutual written modification by the Parties. The provisions above are not intended as an exclusive list of the contents of a DDA (and, if applicable, a CAA), which is anticipated to be longer, more detailed, elaborated on, and go beyond, the above treatment of such issues.

3.8 Delivery of Documents and Reports.

3.8.1 Developer Documents. Developer shall provide to Alameda copies of all final reports, studies, analyses, cost estimates, material correspondence, and similar documents prepared or commissioned by Developer with respect to this Agreement, the Project and the Project Site, promptly upon their completion and following internal review by Developer, but excluding confidential or proprietary information which Alameda may not keep confidential pursuant to Section 10 below.

3.8.2 Alameda Documents. To the extent Alameda has not provided the following to Developer during the Due Diligence Period and to the extent the following are in Alameda's possession as of the Effective Date, promptly following the Effective Date, Alameda shall provide to Developer copies of all final reports, studies, analyses, cost estimates, material correspondence, and similar documents prepared or commissioned by Alameda with respect to this Agreement, the Project, the APIP Project (including tax increment financing analysis) and the Project Site. Thereafter, Alameda shall provide to Developer copies of all reports, studies, analyses, cost estimates, material correspondence, and similar documents prepared or commissioned by Alameda with respect to this Agreement, the Project, the APIP Project (including tax increment financing analysis) and the Project Site, promptly upon their completion and following internal review by Alameda and, if applicable, acceptance by the applicable governing bodies of Alameda, but excluding confidential privileged documents. Nothing in this Section 3.8.2 obligates Alameda to undertake any studies or analyses other than as required by CEQA.

3.8.3 Draft Documents. Notwithstanding anything to the contrary in Sections 3.8.1 and 3.8.2 above, the Parties acknowledge that it may be necessary to share with each other drafts reports, studies, analyses, cost estimates, material correspondence, and similar documents prepared or commissioned by Developer or Alameda with respect to this Agreement, the Project and the Project Site, provided such drafts are either not confidential or proprietary information of Developer which Alameda may not keep confidential pursuant to Section 10 below, or are confidential privileged documents of Alameda.

Section 4. Schedule and Milestones.

4.1 Schedules of Performance. The Non-Mandatory Milestone Schedule of Performance attached hereto as Exhibit B-2 sets forth the Non-Mandatory Milestones (as defined below) and initial estimated time periods for completion thereof. The Schedule of Performance (Mandatory Milestones) attached hereto as Exhibit B-1 (the "**Mandatory Milestone Schedule of Performance**") sets forth the Mandatory Milestones (as defined in Section 4.2 below) and dates for achieving the Mandatory Milestones. The Non-Mandatory Milestone Schedule of Performance and the Mandatory Milestone Schedule of Performance are sometimes referred to herein collectively as the "**Schedules of Performance**". The Schedules of Performance may be

amended by the Parties from time to time to reflect, among other things, extensions pursuant to Sections 4.2.1 or 5 below.

4.2 Mandatory Milestones. The mandatory milestones (the "**Mandatory Milestones**") shall be: (i) the submission of (a) the Project Master Schedule as described in Section 3.2.5.1, above, (b) the Development Concept as described in Section 3.2.1 above, (c) the Infrastructure Plan as described in Section 3.2.2 above, (d) the Business Plan as described in Section 3.2.3 above, and (e) the Entitlement Application as described in Section 3.2.6 above; and (ii) mutual agreement of the Parties on the Project Pro Forma as described in Section 3.2.4 above.

4.2.1 Mandatory Milestone Extension. The date for performance of any Mandatory Milestone may be extended by the Deputy Executive Director of the ARRA if there is a reasonable basis for such extension and so long as such extension does not exceed the Exclusive Negotiation Period, as the Exclusive Negotiation Period may be extended from time to time pursuant to Section 2.2 above.

4.2.2 Waiver of Project Pro Forma Mandatory Milestone. The failure of Developer and Alameda to agree upon the Project Pro Forma by the date for performance set forth therefor on the Mandatory Milestone Schedule of Performance shall be deemed a waiver by Alameda of the date for performance of that Mandatory Milestone.

4.3 Non-Mandatory Milestones. The non-mandatory milestones ("**Non-Mandatory Milestones**") shall be the completion of negotiations of the Transaction Documents listed in the Non-Mandatory Milestone Schedule of Performance attached hereto as Exhibit B-2. The dates for performance listed for the Non-Mandatory Milestones are good faith estimates by the Parties of the time required to complete the Transaction Documents. As used herein, completion of Transaction Documents means finalized and ready for approval by Alameda (by its Board of Directors, Board of Commissioners and City Council), or delivered or fully-executed, as applicable, with respect to any Transaction Document that does not require such approval by Alameda. The failure to complete such Non-Mandatory Milestones by the respective dates listed on the Non-Mandatory Milestone Schedule of Performance for any reason whatsoever shall not in and of itself constitute a default by either Party hereunder.

Section 5. Litigation Force Majeure. The Exclusive Negotiation Period, and the dates for performance of Mandatory Milestones, shall be extended for the period of any Litigation Force Majeure (as defined below); provided that any extension as a consequence of Litigation Force Majeure shall operate to extend the date for achievement of any Mandatory Milestone only to the extent that the Mandatory Milestone is affected by the event or events constituting the Litigation Force Majeure. The Parties may elect to amend this Agreement to reflect extensions pursuant to this Section 5, and such amendments shall reflect which Mandatory Milestones and Transaction Documents (and related Non-Mandatory Milestones) are so affected.

5.1 "**Litigation Force Majeure**" means any action, proceeding, application or request before any court, tribunal, or other judicial, adjudicative or legislative decision-making body, including any administrative appeal, that is brought by a third party and seeks to challenge: (a) the validity of any action taken by Alameda with respect to a Transaction Document(s),

including Alameda's selection of Developer as the developer of the Project Site, the approval by Alameda of any of the proposed Transaction Documents, the performance of any action required or permitted to be performed by Alameda hereunder or under the proposed Transaction Documents, or any findings upon which any of the foregoing are predicated; or (b) the validity of any other approval that is required for the conveyance, management or redevelopment of the Project Site as contemplated hereby and would prevent the Parties from executing the DDA with conditions, as provided above, or prevent the DDA from becoming effective, or require a material modification of the DDA, the Plans, the Entitlement Application or the Project.

Section 6. Alameda Cost Recovery/Reimbursement.

6.1 Initial Payments. Alameda acknowledges receipt of One Hundred Thousand Dollars ($100,000) paid by SCC Acquisitions (the rights to which have been assigned by SCC Acquisitions to Developer) to ARRA as required by the Developer MOA. Within five (5) business days after approval of, and execution by, Alameda and Developer of this Agreement (the "**Approval Date**"), Developer shall pay to Alameda an additional Nine Hundred Thousand Dollars ($900,000), for a total One Million Dollars ($1,000,000) sum (the "**Initial Payment**") that shall be placed in an interest bearing account and the Initial Payment (without interest) shall be applied to the land purchase price if the Project Site is conveyed to Developer.

6.2 Developer Reimbursement of Alameda Pre-Development Costs. Developer shall reimburse Alameda for its pre-development costs, which shall consist of third-party consultant and legal costs and expenses and Alameda staff time, as such staff time shall be reflected in the Annual Budget (as defined below), related to the negotiation and preparation of this Agreement and the Transaction Documents (the "**Pre-Development Work**"), incurred from and after the Effective Date (the "**Pre-Development Costs**"), subject to the provisions of this Section 6. With the exception of the Assistant City Manager, Base Reuse Division Manager, and Manager, Planning, which shall be billed at the percentage of such position's salary and benefits shown on Exhibit C, all employees and consultants of Alameda shall bill on an hourly basis.

6.3 Initial Deposit; Annual Budget; Negotiating Costs Account Ledger. An estimate of Alameda's annual projected Pre-Development Costs for the period commencing with the Effective Date and terminating twelve (12) months later is attached as Exhibit C to this Agreement (the initial "**Annual Budget**"). The Annual Budget shall be evaluated and reasonably adjusted each year. Alameda shall use good faith efforts not to exceed the Annual Budget agreed to by the Parties from time to time. Within ten (10) days after the Effective Date, Developer shall submit a cash deposit to Alameda in an amount equal to twenty-five percent (25%) of the Annual Budget (the "**Initial Deposit**"). The Initial Deposit shall be sequestered in a separate account (the "**Negotiating Costs Account**"). Interest earned on funds in the Negotiating Costs Account shall accrue to that account. All invoices and charges for Pre-Development Costs made against that account during the first ninety (90) days of negotiation shall be recorded on a separate ledger (the "**Negotiating Costs Account Ledger**"). If Alameda's actual Pre-Development Costs for such ninety (90) day period exceed the Initial Deposit, Alameda shall fund such costs from its own sources, but shall record a notice of deficit in the Negotiating Costs Account Ledger.

6.3.1 Mechanism for Funding Ongoing Alameda Cost Recovery.

6.3.1.1 On the ninetieth (90th) day following the Approval Date, Developer shall deposit additional funds into the Negotiating Costs Account equal to twenty-five percent (25%) of the Annual Budget plus any deficit accrued in the Negotiating Costs Account Ledger (each a "**Quarterly Deposit**"). Alameda and Developer shall continue this process for each ninety (90) day negotiating period until this Agreement is terminated; provided, however, that in any twelve (12) month period, Developer shall not be responsible for reimbursement of Pre-Development Costs in excess of the Annual Budget as attached hereto or as revised as provided below.

6.3.1.2 If a deficit or a surplus of greater than ten percent (10%) of the pro-rated Annual Budget has accrued in the Negotiating Costs Account Ledger for three (3) successive quarters, or for three (3) quarters in any calendar year, Developer and Alameda shall meet and confer in good faith to assess the sufficiency of the Annual Budget amount, and may upon the written consent of each, adjust the Annual Budget accordingly, provided, however, if Alameda determines that an increase in the Annual Budget is necessary and Developer does not agree, then Alameda shall have no obligation to perform, or cause to be performed, any Pre-Development Work for which such increased amount is necessary, pending resolution of the dispute. Thereafter, Quarterly Deposits shall consist of twenty-five percent (25%) of the Annual Budget as revised, plus any deficit accrued in the Negotiating Costs Account Ledger.

6.3.1.3 Upon termination of this Agreement any surplus funds in the Negotiating Costs Account remaining after (a) the completion of the ninety (90) day negotiating period during which this Agreement was terminated, and (b) payment of Pre-Development Costs incurred by Alameda during such ninety (90) day negotiating period, shall be returned to Developer. If there is a deficit noted in the Negotiating Costs Account Ledger at the conclusion of the ninety (90) day negotiating period during which this Agreement terminated, then such amount shall be due and payable by Developer. Any extension of this Agreement as provided herein shall extend the cost recovery procedures set forth in this Section 6.3.1. This Section 6.3.1.3 shall survive the expiration or termination of this Agreement.

6.3.1.4 Review of Negotiating Costs Account Ledger. From time to time, upon reasonable prior notice to Alameda, Developer may review the Negotiating Costs Account Ledger to determine whether invoices and charges to the Negotiating Costs Account reflect actual Pre-Development Costs. If Developer disputes any invoice or charge to the Negotiating Costs Account, Developer shall notify Alameda, and if the Parties so agree that an invoice or charge has been inappropriately charged against the account, Alameda shall deduct the amount of the inappropriate invoice(s) or charge(s) from the sum it is entitled to draw from the Negotiating Costs Account for the next ninety (90) day negotiating period, or if after the termination of this Agreement, a disputed invoice or charge is identified and the Parties agree that such invoice or charge was inappropriately charged, Alameda shall promptly pay such amount of Developer.

Section 7. Events of Default.

7.1 Default of Developer. Upon the occurrence of any of the events described in this Section 7.1 and, if applicable, the failure of Developer to cure such event within the respective cure period (as expressly provided in this Section 7.1), there shall be a "**Developer Event of Default**", provided if a cure period is expressly set forth in this Section 7.1, Alameda shall have first given written notice of the default (the "**Alameda Default Notice**") specifying in reasonable detail the basis for the determination of the default. If no cure period is expressly provided in this Section 7.1 (e.g., Section 7.1.4), Alameda may provide a written notice of default with a termination notice pursuant to Section 8.1 below.

7.1.1 Failure of Developer to Negotiate in Good Faith. In the event that Alameda determines in its reasonable discretion that Developer has failed to negotiate diligently and in good faith as provided in Section 1.1 above, Alameda shall have the right to give an Alameda Default Notice to Developer in accordance with Section 7.1 above. Following the receipt of such notice, Developer shall have thirty (30) business days to cure the default identified in the Alameda Default Notice by re-commencing to negotiate in good faith or by notifying Alameda that it does not consider its action or inaction a failure to negotiate diligently and in good faith. If Developer fails to cure the default within such cure period, Alameda shall have the right to terminate this Agreement by written notice to Developer; provided that Developer shall have the right to dispute such termination.

7.1.2 Failure of Developer to Make Requested Deposits into the Negotiating Costs Account. In the event Developer fails to make the Initial Deposit or any Quarterly Deposit pursuant to the procedure set forth in Section 6 of this Agreement, Alameda shall have the right to give written notice thereof to Developer specifying the amount of the deposit which was not made. Following the receipt of such notice, Developer shall have fifteen (15) business days to make the required deposit and Alameda shall have the right to suspend all Pre-Development Work being performed by third parties paid by Alameda during such cure period. If Developer has not then made the required deposit, Alameda shall have the right to terminate this Agreement by written notice to Developer.

7.1.3 Breach by Developer of Section 9.2 of this Agreement. If Developer makes any Transfer (as defined in Section 9.2.4.5 below) in violation of Section 9.2 below, Alameda shall have the right to give an Alameda Default Notice in accordance with Section 7.1 above to Developer. If Developer fails to cure the default within forty-five (45) business days of having received such notice, Alameda shall have the right to terminate this Agreement by written notice to Developer.

7.1.4 Voluntary Bankruptcy or Insolvency. In the event that Developer becomes insolvent and/or files a voluntary petition in bankruptcy, Alameda shall have the right to terminate this Agreement by written notice to Developer.

7.1.5 Involuntary Bankruptcy. In the event that an involuntary petition in bankruptcy has been filed against Developer (an "**Involuntary Bankruptcy**"), Developer shall promptly notify Alameda and shall have one hundred twenty (120) days from the filing of such Involuntary Bankruptcy to cause the same to be dismissed. If Developer fails to cause dismissal

within such one hundred twenty (120) day period, Alameda shall have the right to terminate this Agreement by written notice to Developer.

7.1.6 Failure to Achieve a Mandatory Milestone. Subject to Sections 4.2.1 and 4.2.2 above, in the event Developer fails to achieve a Mandatory Milestone by the applicable date set forth in the Mandatory Milestone Schedule of Performance, as such date may be extended pursuant to Section 4.2.1 above, Alameda shall have the right to give an Alameda Default Notice in accordance with Section 7.1 above to Developer. If Developer fails to cure the default within forty-five (45) business days of having received such notice, Alameda shall have the right to terminate this Agreement by written notice to Developer.

7.2 Default of Alameda. In the event that Developer determines in its reasonable discretion that Alameda has failed to negotiate diligently and in good faith as provided in Section 1.1 above, Developer shall have the right to give written notice (the **"Developer Default Notice"**) thereof to Alameda specifying in reasonable detail the grounds for such failure. Following the receipt of such notice, Alameda shall have thirty (30) business days to cure the default identified in the Developer Default Notice by re-commencing to negotiate in good faith or by notifying Developer that it does not consider its action or inaction a failure to negotiate diligently and in good faith. If Alameda fails to cure the default within the applicable cure period (an **"Alameda Event of Default"**), Developer shall have the right to terminate this Agreement by written notice to Alameda, provided that Alameda shall have the right to dispute such termination.

7.3 Failure to Agree Upon Transaction Documents. Notwithstanding anything to the contrary in this Agreement, provided that each Party has complied with the provisions of this Agreement, the failure to reach agreement upon any of the Transaction Documents or complete any of the identified tasks set forth in Section 3 above shall not be deemed either an Alameda Event of Default or Developer Event of Default. If the Term of this Agreement expires prior to reaching agreement pursuant to this Section 7.3, Developer shall not be entitled to the return of the Initial Payment or any interest accrued thereon.

7.4 Remedies. In any action at law or equity or other legal or administrative proceeding to remedy a Developer Event of Default or an Alameda Event of Default or otherwise enforce this Agreement, or that otherwise may arise out of this Agreement neither Alameda nor Developer shall be entitled to damages or monetary relief other than as set forth in this Section 7.4. Permitted remedies shall include (i) mandatory or injunctive relief, (ii) writ of mandate, (iii) termination of this Agreement, or (iv) a contract Claim (as defined Section 15.5 below) to recover money due to Alameda or Developer as a payment of Pre-Development Costs or reimbursement of excess Pre-Development Cost deposits under Section 6 of this Agreement; provided, however, neither Alameda nor Developer shall be liable, regardless of whether the Claim is based in contract or tort, for any special, indirect or consequential damages.

Section 8. Termination.

8.1 Termination by Notice. Upon the occurrence of any of the circumstances contained in this Section 8.1, this Agreement may be terminated by the applicable Party by

written notice to the other. If this Agreement is terminated pursuant to this Section 8.1, Developer shall not be entitled to a refund of the Initial Payment or any interest accrued thereon.

8.1.1 A Developer Event of Default pursuant to Section 7.1 above, provided that an Alameda Default Notice has been sent and any period of a right to cure has passed without such cure occurring.

8.1.2 Developer, in its sole discretion, may terminate this Agreement at any time upon provision of fifteen (15) business days prior written notice to Alameda in the event that during the course of its investigations and evaluation of the Project Site and the Project, Developer determines in good faith that the Project is not commercially feasible or capable of being financed in a commercially reasonable manner.

8.1.3 Developer elects, in writing, not to commence reimbursement of Pre-Development Costs as provided in Section 6.3 above.

8.2 Termination by Alameda Default. In the event of an Alameda Event of Default pursuant to Section 7.2 above, Developer may terminate this Agreement by delivery of written notice to Alameda, provided that a Developer Default Notice has been sent and any period of a right to cure has passed without such cure occurring. If this Agreement is terminated pursuant to this Section 8.2, Developer shall be entitled to a refund of the Initial Payment, together with any interest accrued thereon. Such refund obligation shall survive the expiration or termination of this Agreement.

8.3 Termination by Expiration. This Agreement will automatically terminate upon expiration of the Exclusive Negotiation Period, as it may be extended pursuant to Section 2.2 above. If this Agreement terminates pursuant to this Section 8.3, then, absent an Alameda Event of Default, Developer shall not be entitled to a refund of the Initial Payment or any interest accrued thereon.

8.4 Negotiating Costs Account Refund. If this Agreement terminates pursuant to this Section 8, Alameda shall return to Developer any funds remaining in the Negotiating Costs Account after all applicable payments have been made from the Negotiating Costs Account for the period to and including the termination date. This Section 8.4 shall survive the termination of this Agreement.

Section 9. Representations and Warranties; Transfers.

9.1 Representations and Warranties.

9.1.1 Duly Formed and Validly Existing. Developer represents and warrants that SCC Alameda Point LLC is a Delaware limited liability company duly formed and validly existing under the laws of the State of Delaware and is admitted and in good standing (as a foreign limited liability company) in the State of California.

9.1.2 Developer Authority. Developer represents and warrants that the person(s) executing this Agreement on behalf of Developer has full right, power and authority to execute this Agreement and to bind Developer hereunder.

9.1.3 Alameda Authority. Alameda represents and warrants that the persons executing this Agreement on behalf of Alameda have the full right, power and authority to execute this Agreement and to bind Alameda hereunder.

9.2 Transfer of this Agreement.

9.2.1 Purpose of Restrictions on Transfer. The qualifications and identity of Developer are of particular concern to Alameda, in view of the importance of the entitlement and development of the Project and the Project Site to Alameda. It is because of the qualifications and identity of Developer that Alameda is entering into this Agreement with Developer. Accordingly, a Transfer (as defined below) of this Agreement is permitted only as provided in Sections 9.2.2 and 9.2.3 below.

9.2.2 Transfers Prohibited; Alameda Consent. Except as permitted in Section 9.2.3 below, Developer shall not make or create any Transfer of its interest in this Agreement or any part thereof, nor shall any Person having an Ownership Interest in Developer Transfer any such Ownership Interest without the prior written consent of Alameda, which consent may be given in the sole discretion of Alameda. Any consent or approval of Alameda pursuant to this Section 9.2 shall be as authorized by its Board of Directors, Board of Commissioners and City Council. In the absence of express written approval by Alameda, no Transfer shall relieve Developer or any other party from any obligations pursuant to this Agreement.

9.2.3 Permitted Transfer.

9.2.3.1 Developer shall have the right to Transfer its interest in this Agreement without Alameda's consent to any Controlled Affiliate (as defined below) so long as SCC Acquisitions, LLC shall be Controlled (as defined below) by Bruce Elieff and/or Steve Elieff.

9.2.3.2 Ownership Interests in Developer may be Transferred without Alameda's consent provided that after any such Transfer (i) SCC Acquisitions, LLC shall be Controlled (as defined below) by Bruce Elieff and/or Steve Elieff and (ii) SCC Acquisitions, LLC or its wholly owned subsidiary (a) shall have contributed at least fifteen percent (15%) of the cash equity contributed by all of the owners of Developer, (b) is responsible for the day-to-day management of Developer, and (c) during the Exclusive Negotiation Period there exists no right of the other parties holding Ownership Interests of Developer or any other party to remove SCC Acquisitions, LLC or its wholly owned subsidiary from the day-to-day management of Developer without the prior written consent of Alameda, which consent will not be unreasonably withheld (and the lack of a replacement acceptable to Alameda shall be deemed reasonable grounds).

9.2.4 Definitions. For purposes of this Agreement, the capitalized terms defined in this Section 9.2.4 shall have the meanings ascribed to them below:

9.2.4.1 **"Control"** or **"Controlled by"** or **"Controlling"** or any derivative thereof, when used with respect to any specified Person, means the possession, directly or indirectly, of fifty-one percent (51%) or more of the Ownership Interests of such Person.

9.2.4.2 **"Controlled Affiliate"** shall mean a Person in which Developer has contributed at least fifteen percent (15%) of the cash equity contributed by all of the owners of such Person; provided that (a) Developer is responsible for the day- to-day management of such Person, and (b) during the Exclusive Negotiation Period there exists no right of the other parties holding Ownership Interests of such Person or any other party to remove Developer from the day-to-day management of such Person without the prior written consent of Alameda, which consent will not be unreasonably withheld, conditioned or delayed (and the lack of a replacement acceptable to Alameda shall be deemed reasonable grounds).

9.2.4.3 **"Ownership Interest"** shall mean the possession, directly or indirectly, of voting securities or partnership, general partnership, membership or other ownership interests (based upon value or vote) of a Person.

9.2.4.4 **"Person"** shall mean any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, or any other entity or association.

9.2.4.5 **"Transfer"** shall mean any voluntary or involuntary transfer, sale, assignment, pledge, hypothecation or the like to any Person, including any transfer, sale, assignment, pledge or hypothecation of Ownership Interests in Developer.

9.2.5 Compliance. Alameda shall have the right, but not the obligation, from time to time, by written notice to Developer, to require that Developer demonstrate compliance with the requirements of this Section 9.2; provided, however, Alameda may not require such demonstration more than once every six (6) months. Developer shall provide to Alameda within five (5) business days of receipt of such notice, all documentation reasonably necessary in order to enable Alameda to determine whether Developer is in compliance with the requirements of this Section 9.2.

9.3 Individuals on Development Team. Developer shall endeavor to retain the key individuals assigned by it to perform the responsibilities identified herein and in the event of changes in such personnel, individuals of substantially equivalent seniority, experience and qualifications shall be assigned. Developer shall provide written notice to Alameda of changes in its key personnel and their respective responsibilities and shall furnish to Alameda information on the seniority, experience and qualifications of any additional or substituted individuals.

Section 10. Confidentiality of Information and Negotiations. Alameda and Developer enter this Agreement with the understanding that Developer may provide certain information of a confidential nature during the negotiations of the Transaction Documents and other tasks identified in Section 3 above. Such information may be necessary for Alameda to verify information that is relevant to the negotiations of the Transaction Documentation. Alameda and Developer agree that they will keep confidential and not disclose any information submitted by Developer in the course of the negotiations or preliminary drafts of Transaction Documents or other negotiation preliminary draft documents, including financial analyses, that are identified as privileged or confidential under the law unless ordered to do so by a final order of court. Developer agrees to bear all costs of any litigation that is filed to determine the applicability of public records law to information and documents submitted by Developer in furtherance of

negotiating a DDA or any other agreements contemplated in the Agreement. Notwithstanding the provisions of this Section 10, in no event shall any party be required to disclose to any other party information which is protected by the attorney-client privilege.

Section 11. Representatives of the Parties.

11.1 Alameda Representative. For the purpose of administering the provisions of this Agreement, Alameda shall be represented by the Deputy Executive Director of the ARRA, or such other Alameda staff as shall be designated from time to time to act for a particular matter in writing.

11.2 Developer Representative. For the purpose of administering the provisions of this Agreement, Developer shall be represented by Bill Myers, or such other employees of Developer as are designated from time to time to act for a particular matter in writing by Developer. In addition, Developer shall assign personnel to assist in the negotiations and the completion of the tasks set forth in Section 3 above.

Section 12. Limitations of this Agreement.

12.1 By executing this Agreement, Alameda is not committing itself to, or agreeing to undertake any: (i) exchange or transfer of land, (ii) disposition of land to Developer, or (iii) other acts or activities requiring the subsequent independent exercise of discretion by ARRA, the CIC, the City or any agency or department thereof. This Agreement does not constitute a disposition or exchange of property by ARRA, the City or the CIC. Execution of this Agreement by Alameda is merely an agreement to enter into a period of exclusive negotiations according to the terms thereof, reserving final discretion and approval by the Board of Directors of ARRA, Board of Commissioners of the CIC and the City Council as to a DDA or any other agreement(s) contemplated in this Agreement and all proceedings and decisions in connection therewith.

12.2 If a DDA has not been executed by the Parties by the expiration of the Exclusive Negotiation Period (as extended pursuant to Section 2.2 above) or if this Agreement has otherwise been terminated in accordance with the provisions set forth herein, neither Party shall have any further rights or obligations under this Agreement, except with respect to any obligation which expressly survives the termination or expiration of this Agreement as set forth in Sections 6, 8 and 18 of this Agreement.

Section 13. Approval of DDA. If negotiations culminate in a DDA between Alameda and Developer following CEQA review of the Project, such DDA shall become effective only after and upon the approval by the Board of Directors of ARRA (if applicable), Board of Commissioners of the CIC and the City Council and execution by Alameda pursuant to direction of the Board of Directors of ARRA (if applicable), Board of Commissioners of the CIC and the City Council.

Section 14. Alameda Right to Obtain Information and to Consult with Others. Alameda reserves the right to obtain information concerning the transaction described by this Agreement from any person, entity or group; provided, however, that excepting consultants retained by Alameda to assist in the negotiation process contemplated in this Agreement, Alameda shall not

reveal to any such persons or groups confidential or proprietary information or other information kept confidential as provided in Section 10 of this Agreement.

Section 15. Nonliability of ARRA, the CIC and the City. Subject to Alameda's compliance with the provisions of this Agreement:

15.1 Developer Warrants it Has No Claims Against the ARRA, the CIC or the City. Developer agrees that it does not now have and shall not at any time, whether before or after its execution of this Agreement, have or make any Claim or Claims against Alameda, individually or collectively, or against ARRA, the CIC or City, or the ARRA Property, CIC Property, or City Property (all as hereinafter defined), directly or indirectly, by reason of any or all of the causes set forth in Section 15.3 below.

15.2 Nonliability of the ARRA, the CIC and the City of Alameda. Developer agrees that Alameda shall not have any liability whatsoever of any kind or character, directly or indirectly, by reason of any or all of the causes set forth in Section 15.3 below.

15.3 Causes to which Nonliability Apply. The causes to which the provisions of Sections 15.1 and 15.2 above apply are as follows:

15.3.1 Any aspect of the RFQ, including any information or material set forth therein or referred to therein;

15.3.2 Any aspect of the Developer MOA, including any information or material set forth therein or referred to therein;

15.3.3 Any modification, or suspension of the RFQ or Developer MOA, or informalities or defects therein;

15.3.4 Any defects in the selection procedure identifying Developer conducted by Alameda or any act or omission of Alameda with respect thereto, or any release or dissemination of any information submitted by Developer to Alameda prior to the Effective Date;

15.3.5 The expiration of the Exclusive Negotiation Period, whether initial or an extension thereof; or

15.3.6 The exercise of any ARRA, CIC or City discretion, decision and judgment permitted by this Agreement.

15.4 Waiver of Claims. Developer expressly and absolutely waives any and all Claim or Claims against the ARRA, the CIC, the City of Alameda, ARRA Property, CIC Property or City Property, directly or indirectly, arising out of, or in any way connected with, any or all of the matters set forth in Section 15.3 above.

15.5 Definitions. For purposes of this Agreement, the words defined in this Section 15.5 shall have the meanings ascribed to them herein:

15.5.1 "**ARRA**", "**CIC**", and "**City**" includes their respective members, officers, employees, agents, consultants, successors, and assigns.

15.5.2 "**ARRA Property**", "**CIC Property**" and "**City Property**" shall include the Project Site and all other property of ARRA, the CIC and the City, real, personal or of any other kind or character.

15.5.3 "**Best Efforts**" shall mean the commercially reasonable expenditure of time and effort on the part of the representatives of the Parties to accomplish a specified task, but shall not mean the expenditure of funds by ARRA, the City or the CIC which are not recoverable under the cost recovery mechanism set forth in Section 6 above, nor shall "Best Efforts" require either Party to incur liabilities unless such act is otherwise explicitly required by this Agreement or by State of California or federal law.

15.5.4 "**Claim**" or "**Claims**" shall mean any and all protests, rights, remedies, interests, objections, claims, demands, actions or causes of action of every kind or character whatsoever, in law or in equity, for money or otherwise, including but no limited to Claims for injury, loss, expense or damage, Claims to property, real or personal, or rights or interest therein, and Claims to contract or development rights or development interests of any kind or character, in any ARRA Property, CIC Property and/or City Property, or Claims that might be asserted against or cloud title to ARRA Property, CIC Property or City Property.

Section 16. Hold Harmless and Indemnity; Limitation on Liability.

16.1 Indemnity. Developer shall defend, hold harmless and indemnify ARRA, the CIC and the City from and against any and all Claims made by any third party directly or indirectly arising out of Developer's Response to the RFQ and/or the Developer MOA and/or this Agreement; provided, however, such obligation shall not apply to any Claim resulting solely from an act or omission of ARRA, the CIC and/or the City.

16.2 Limitation on Liability. No member, official or employee of Alameda shall be personally liable to Developer in the event of any default or breach by Alameda, or for any amount which may become due to Developer, or on any obligations under the terms of this Agreement. No member, officer or employee of Developer or its affiliates shall be personally liable to Alameda in the event of any default or breach by Developer, or for any amount which may become due to Alameda, or on any obligations under the terms of this Agreement.

Section 17. Notices. Formal notices, demands and communications between the Parties shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by an express delivery or overnight courier service that maintains written delivery records, to the office of the Parties shown as follows, or such other address as the Parties may designate in writing from time to time:

If to Alameda:

ARRA: Alameda Reuse and Redevelopment Authority
950 West Mall Square
Alameda, California 94501
Attention: Alameda Point Project Manager

CIC: Community Improvement Commission of the City of Alameda
950 West Mall Square
Alameda, California 94501
Attention: Development Services Director

City: City of Alameda
2263 Santa Clara Avenue
Alameda, California 94501
Attention: City Manager

With copies to City of Alameda
2263 Santa Clara Avenue, Room 280
Alameda, California 94501
Attention: City Attorney

If to Developer: SCC Alameda Point LLC
c/o SunCal Companies
1430 Blue Oaks Boulevard, Suite 200
Roseville, California 95747
Attention: Bill Myers

SCC Alameda Point LLC
c/o SunCal Companies
2392 Morse Ave
Irvine, California 92614
Attention: Marc Magstadt

SCC Alameda Point LLC
c/o SunCal Companies
2392 Morse Ave
Irvine, California 92614
Attention: Bruce Cook

Such written notices, demands, and communications shall be effective on the date shown on the written delivery record as the date delivered or the date on which delivery was refused. Notwithstanding the foregoing, Alameda may respond to Developer requests for information by delivering requested information to only the address of the requesting representative of Developer.

Section 18. Entry On Property. During the Term of this Agreement, ARRA shall provide Developer with reasonable access to and entry upon the Project Site, during normal business hours and in accordance with the terms and conditions of this Section 18, for the purposes of conducting such non-intrusive inspections and studies as Developer may elect of the physical condition of the Project Site. Such access, inspections and studies shall be permitted and conducted on the following terms and conditions:

18.1 Developer shall pay for all inspections and studies ordered by Developer.

18.2 Developer shall maintain, and ensure that its contractors maintain, the following insurance:

18.2.1 Developer shall maintain commercial general liability and property damage insurance, contractual liability and worker's compensation insurance as follows:

18.2.1.1 Broad form commercial general liability insurance, in an amount not less than Five Million Dollars ($5,000,000), combined single limit.

18.2.1.2 Workers' compensation, statutory coverage as required by the State of California, and employer's liability in an amount not less than One Million Dollars ($1,000,000).

18.2.1.3 Automobile liability insurance for owned, hired or non-owned vehicles, in an amount not less than One Million Dollars ($1,000,000), combined single limit.

18.2.2 All insurance provided for under this Agreement shall be effected under valid enforceable policies issued by insurers of recognized responsibility having a rating of at least A-VIII in the most current edition of A.M. Best's Insurance Reports, or otherwise acceptable to ARRA' Risk Manager.

18.2.3 All liability policies required hereunder shall be written on an occurrence basis. The required coverage may be provided by a blanket, multi-location policy.

18.2.4 Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are to be included in such general annual aggregate limit, such general aggregates limit shall double the occurrence or claims limits specified.

18.2.5 Commercial general liability and automobile liability insurance policies shall be endorsed or otherwise provide the following:

18.2.5.1 Name the Alameda Reuse and Redevelopment Authority (ARRA), the Community Improvement Commission of the City of Alameda (CIC), and the City of Alameda (City) and their councils, commissions, boards, departments, officers, agents, employees and volunteers, as additional insureds, using ISO Additional Insured Endorsement Form CG2026 (or a substitute providing equivalent coverage) or as may be mutually agreed.

18.2.5.2 All policies shall be endorsed to provide thirty (30) days' advance written notice to ARRA' Risk Manager of cancellation, except in the case of cancellation for nonpayment of premium, in which case cancellation shall not take effect until ten (10) days prior written notice has been given. Developer covenants and agrees to give ARRA reasonable notice in the event that it learns or has any reason to believe that any such policy may be canceled or that the coverage of any such policy may be materially reduced.

18.2.6 All insurance provided under this Agreement shall be primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought. All policies shall include provisions denying such respective insurer the right of subrogation and recovery against ARRA. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

18.2.7 Developer shall deliver to ARRA certificates of insurance and Additional Insured Endorsements in form reasonably satisfactory to ARRA, evidencing the coverages required hereunder (**"Evidence of Insurance"**), on or before the Effective Date of this Agreement, and Developer shall provide ARRA with Evidence of Insurance thereafter before the expiration dates of expiring policies. In addition, Developer shall deliver to ARRA complete copies of the relevant policies upon request therefor from ARRA.

18.2.8 Notwithstanding anything to the contrary in this Agreement, Developer's compliance with this Section 18.2 shall in no way relieve or decrease liability of Developer under Section 18.6 below, or any other provision of this Agreement, and no insurance carried by Alameda shall be called upon to satisfy Developer's indemnification obligations under Section 18.6 below or any other obligations of Developer or its employees, agents, consultants, and contractors under this Agreement.

18.3 Developer hereby waives any and all rights of recovery against Alameda and its employees for any loss or damage to the extent these damages are insured by insurance carried by Developer, and the insurance proceeds are actually received by the insured, including amounts within any insurance deductible or self-insured retention. Developer shall, upon obtaining policies of insurance required in this Agreement, give notice to the insurance carrier or carriers that the foregoing waiver of subrogation is contained in this Agreement.

18.4 Developer will take all steps necessary to ensure that any conditions on the Project Site created by Developer's entry will not interfere with the normal operation of the Project Site or create any dangerous, unhealthy, unsightly or noisy conditions on the Project Site.

18.5 In connection with any and all entry by Developer or its employees, agents, consultants, and contractors on the Project Site, Developer shall keep the Project Site free of all liens by mechanics, materialmen, laborers, architects, engineers, and any other persons or firms engaged by Developer to perform any work in connection with the Project Site.

18.6 Developer shall indemnify and hold Alameda harmless from and against any costs, damages, liabilities, losses, expenses, liens or claims (including, without limitation, reasonable attorneys' fees) arising out of or relating to any entry on the Project Site by Developer, its agents, employees, consultants or contractors in the course of performing the inspections or studies provided for in this Agreement, or to any conditions on the Project Site created by Developer's entry. The foregoing indemnity shall survive the expiration or termination of this Agreement.

18.7 Developer's activities on the Project Site shall be subject to the general supervision and inspection of Alameda and to such rules and regulations regarding ingress, egress, safety, sanitation and security as may be reasonably prescribed by Alameda from time to time.

Section 19. Cooperation. In connection with this Agreement, the Parties shall reasonably cooperate with one another to achieve the objectives and purposes of this Agreement, including cooperating with each other in preparing and negotiating the Transaction Documents with third parties identified in Section 3 above. In so doing, the Parties shall each refrain from doing anything that would render its performance under this Agreement impossible.

Section 20. Governmental Contact. Developer agrees that it will not meet, or engage in negotiations, with any governmental officials or staff (other than Alameda and its staff) whose approval is required to a Transaction Document, concerning the Project or the Project Site without giving the Deputy Executive Director of the ARRA reasonable prior notice and the opportunity to participate with Developer in any such meeting, or negotiations. ARRA agrees that it will not meet, or engage in negotiations, with any governmental officials or staff whose approval is required to a Transaction Document, concerning the Project or the Project Site without reasonable prior notice to Developer. ARRA shall keep Developer informed of the substance of any such meetings and negotiations and shall permit Developer to participate in the same. Further, Alameda and Developer agree to refrain from knowingly engaging in contacts or communications with government officials (other than Alameda staff) in a manner reasonably expected to prejudice the interests of the other Party.

Section 21. Leases.

21.1 New Lease Termination Rights. During the Exclusive Negotiation Period (i) ARRA shall consult with Developer with respect to prospective tenants and terms of any leases of any portion of the Project Site, and (ii) without the written consent of Developer, ARRA shall not enter into any leases with respect to the Property or any portion thereof which does not contain the following clause:

> Section __. Compliance with LIFOC. Notwithstanding any provision of this Lease, Landlord and Tenant hereby agree as follows: (i) Tenant will not do or permit anything to be done in or on the Premises which will cause the occurrence of a default by Landlord under the LIFOC, (ii) if the LIFOC expires or is terminated for any reason, then this Lease shall thereupon terminate, without any liability to Landlord, as if such date were the scheduled expiration date of the

Term, as defined in Section __ below, and (iii) this Lease shall be terminable by Landlord without penalty on sixty (60) days advance written notice.

21.2 Existing Uses. Notwithstanding anything to the contrary in this Section 21, as a condition precedent to the DDA, ARRA or its governmental successors or assigns shall be able to enter into the following leases of the Property with consultation, but without the consent of Developer:

21.2.1 City Hall West (Building 1)

21.2.2 Fire Station No. 5 (Building 6)

21.2.3 O'Club (Building 60) (collectively, Sections 21.2.1 through 21.2.3 shall be referred to as the "**City Buildings**")

Such leases shall provide that it shall be an event of default for the subject tenant (or its permitted successors in interest under this Section 21.2) to cease active use of or cease to occupy said property for a period of greater than three (3) months. Further, such leases shall contain provisions that prohibit the assignment, transfer, sublet, or other disposition of the lease to any party other than Alameda or its constituent bodies. Developer shall accept conveyance of the portions of the Property on which such leases are located subject to such leases, provided that Developer may, at its sole cost and expense, relocate such use of any or all of the City Buildings on terms and conditions approved by Alameda, which approval shall not be unreasonably withheld.

21.3 APT Headend Lease. Notwithstanding anything to the contrary in Section 21.1 above, Alameda has an interest in continuing the lease with APT of Building 2, Wing 3 (the "**APT Headend Lease**") due to the service provided by APT from the leased premises and the related equipment installed thereon, and shall condition conveyance of the portion of the Property subject to the APT Headend Lease on extension of the APT Headend Lease for a long-term, market-rate lease.

Section 22. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 23. Entire Agreement. This Agreement contains the entire agreement of the Parties regarding the Project. This Agreement may be modified only by written agreement signed by the Parties hereto.

Section 24. Captions. Captions at the beginning of each section of this Agreement are for reference only and shall in no way define or interpret any provision hereof.

Section 25. Construction. The provisions of this Agreement have been jointly drafted by the Parties and shall be constructed as to the fair meaning and not for or against any Party based upon any attribution of such Party as the sole source of the language in question.

Section 26. Non-Waiver. No waiver made by either Party with respect to the performance, or manner or time of performance, or any obligation of the other Party or any condition to its own

obligation under this Agreement will be considered a waiver with respect to the particular obligation of the other Party or condition to its own obligation beyond those expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the Party.

Section 27. Time Periods. Any time period to be computed pursuant to this Agreement shall be computed by excluding the first day and including the last day. If the last day falls on a Saturday, Sunday or holiday, the last day shall be extended until the next business day that Alameda is open for business, but in no event shall the extension be for more than three (3) calendar days. All references to days in this Agreement shall mean calendar days unless otherwise expressly specified.

Section 28. Time of the Essence. Time is of the essence with respect to each provision of this Agreement, including, without limitation, each Mandatory Milestone set forth in the Mandatory Milestone Schedule of Performance attached hereto as Exhibit B-1.

Section 29. Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 30. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

Section 31. Exhibits. References in this Agreement to exhibits (unless the context otherwise requires) is to the exhibits described on the List of Exhibits attached hereto, all of which exhibits are hereby incorporated by reference into this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties, who have had the opportunity to consult with their attorneys with respect hereto and who fully and completely understand the terms and provisions hereof, have executed this Agreement as of the date first set forth above.

ARRA:

ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY,
a joint powers authority formed under California law

By: _____

Name: _____

Title: _____

Approved as to form:

By: Teresa L. Highsmith

Name: Teresa L. Highsmith

Title: General Counsel

[SIGNATURES CONTINUE]

CIC:

COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA,
a public body, corporate and politic

By: _____

Name: _____

Title: _____

Approved as to form:

By: Teresa L. Highsmith

Name: Teresa L. Highsmith

Title: General Counsel

[SIGNATURES CONTINUE]

City:

CITY OF ALAMEDA,
a municipal corporation

By: _____

Name: _____

Title: _____

Approved as to form:

By: Teresa L. Highsmith

Name: Teresa L. Highsmith

Title: City Attorney

[SIGNATURES CONTINUE]

Developer:

SCC ALAMEDA POINT LLC,
a Delaware limited liability company

By: _____
Name: Bruce V. Cook
Title: Assistant Counsel

LIST OF EXHIBITS

Exhibit A	Map of the Project Site
Exhibit B-1	Schedule of Performance (Mandatory Milestones)
Exhibit B-2	Schedule of Performance (Non-Mandatory Milestones)
Exhibit C	Annual Budget

Exhibit A

Map of the Project Site

[Attached]

EXHIBIT A
NO. 2 Pan
PROJECT SITE

Exhibit B-1

Schedule of Performance
(Mandatory Milestones)

All terms not defined herein shall have the respective meanings ascribed to them in the Agreement to which this Exhibit B-1 is attached.

Unless otherwise provided, all Mandatory Milestones are measured from the Effective Date (for example, eight (8) months means the date which is eight (8) months after the Effective Date).

A.	Mandatory Milestone		Submission Date
	1.	Master Project Schedule:	Thirty (30) business days
	2.	Development Concept:	Eight (8) months
	3.	Infrastructure Plan:	Eight (8) months
	4.	Business Plan:	Eight (8) months
	5.	Entitlement Application:	Ten (10) months
B.	Mandatory Milestone		Completion Date
	1.	Project Pro Forma:	Ten (10) months

Exhibit B-2

Schedule of Performance
(Non-Mandatory Milestones)

All terms not defined herein shall have the respective meanings ascribed to them in the Agreement to which this Exhibit B-2 is attached.

Unless otherwise provided, all Non-Mandatory Milestones are measured from the Effective Date (for example, eight (8) months means the date which is eight (8) months after the Effective Date).

Non-Mandatory Milestones described below are good faith estimates by the Parties of the time required to complete the Transaction Documents.

Non-Mandatory Milestone	Completion Date
1. EDC MOA Amendment	**18 months**
a. Finalize Navy Term Sheet	6 months
b. Submit EDC application	10 months
c. Finalize EDC MOA Amendment	18 months
2. NEPA Supplemental Environmental Impact Statement (SEIS)	**24 months**
a. Project scoping	11 months
b. Circulate Draft SEIS	18 months
c. Hearings and comments	18-24 months
d. Finalize SEIS	24 months
3. Section 106 Memorandum	**24 months**
a. Revise historic resources report	7 months
b. Economic study on buildings	15 months
c. Finalize Section 106 Memorandum amendment	24 months

4. USFWS/NMFS Biological Documents	**24 months**
a. Biological Assessment/reinitiate Section 7 consultation with USFWS	6 months
b. Finalize new Biological Opinion with USFWS	18 months
c. Predator Management Agreement	24 months
d. Determine if NMFS Biological Opinion necessary/conduct Biological Assessment	6 months
e. Finalize NMFS Biological Opinion	18 months
5. Early Transfer Documents	**24 months**
a. Finalize Draft Navy Term Sheet	6 months
b. Draft ETCA	12 months
c. Draft Administrative Order (AOC) with Environmental Protection Agency (EPA), Department of Toxic Substances Control, Regional Water Quality Control Board	15 months
d. Draft FOSET	18 months
e. Public Comment/Finalize ETCA, AOC, FOSET, submit to Governor/EPA	21 months
f. Approval by Governor/EPA	24 months
g. Final remediation contract and environmental insurance policies	24 months
6. CEQA Documents	**24 months**
a. Project scoping	10 months
b. Notice of Preparation	11 months
c. Circulate Draft Environmental Impact Report (EIR)	18 months
d. Hearings and comments/finalize EIR	24 months

7. CAA/DDA	**24 months**
a. CAA executed	12 months
b. Draft DDA	18 months
c. Public hearings	18-24 months
d. Approval of DDA	24 months
8. Development Agreement/Entitlements	**24 months**
a. Submit Entitlement Application	10 months
b. Public hearings/approvals	18-24 months
c. Development Agreement finalized and approvals granted	24 months
9. Tidelands Trust Exchange Agreement	**12 months**
a. Submit draft Tidelands Trust Exchange Agreement to California State Lands Commission (CLSC)	3 months
b. Reach agreement on language with CLSC staff	9 months
c. Obtain approval of CLSC	12 months
10. Public Planning Process	**24 months**
a. Introductory meetings/ constraints analysis	3 months
b. First round public planning charrettes	4-6 months
c. Second round public planning charrettes	6-8 months
d. Development Concept public review	10 months
e. Historic Preservation Plan public review	10-12 months
f. Focused topic community meetings	12-18 months
g. Hearings and comments on EIR/DDA/entitlements	18-24 months

Exhibit C

Annual Budget

[Attached]

SUNCAL COMPANIES
ENA Cost Recovery Budget

EXHIBIT C

City Staff Salary and Benefits	Salary	Benefits	Total	24-Month Duration		1st Quarter Negotiating Deposit
City Manager Staff						
Assistant City Manager*	$188,351	$56,505	$244,856	25.00%	$122,428	$15,303
Development Services Staff						
Director, Development Services Department	$172,430	$51,729	$224,159	25.00%	$112,079	$14,010
Base Reuse Division Manager*	$135,645	$40,694	$176,339	75.00%	$264,508	$33,063
Redevelopment Manager	$104,907	$31,472	$136,379	30.00%	$81,827	$10,228
Contract Administrator	$68,478	$20,543	$89,021	3.00%	$5,341	$668
Office Assistant, Base Reuse	$62,132	$18,640	$80,771	15.00%	$24,231	$3,029
Other City Staff						
Assistant City Attorney	$135,645	$40,694	$176,339	15.00%	$52,902	$6,613
Director, PW	$171,887	$51,566	$223,453	5.00%	$22,345	$2,793
City Engineer, PW	$127,914	$38,374	$166,288	15.00%	$49,886	$6,236
Supervising Civil Engineer, PW	$111,740	$33,522	$145,262	15.00%	$43,578	$5,447
Traffic Engineer, PW	$71,473	$21,442	$92,915	15.00%	$27,874	$3,484
Manager, Planning*	$115,671	$34,701	$150,372	50.00%	$150,372	$18,797
Director, Finance	$156,668	$47,000	$203,668	3.00%	$12,220	$1,528
Subotal Salary and Benefits					**$969,594**	[illegible]
Consultant/Legal Services						
Legal						
Ellman Burke Hoffman & Johnson (CAA, DDA)					$252,000	$31,500
Fragner, Seifert, Pace and Winograd (CAA, DDA)					$180,000	$22,500
Shute, Mihaly & Weinberger (Tidelands Trust, CEQA, Navy MOA, ETCA, etc.)					$475,000	$59,375
Contractual						
Economic & Planning Systems (Land Economics and Fiscal Impact Analysis)					$365,000	$45,625
Keyser Marston Associates (Land Economics)					$20,000	$2,500
MARC Associates (Inter-governmental Relations)					$168,000	$21,000
Russell Resources (Environmental)					$200,000	$25,000
Engineering Consultants					$100,554	$12,569
Subtotal Consultant/Legal Services					**$ 1,760,554**	[illegible]
TOTAL					**$ 2,730,148**	[illegible]

* These staff members will be billed monthly to the project as a fixed percent Full-Time Equivalent employee; the remaining City staff and consultants will use timesheets to bill time expended on the project

7/13/2007